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3 CONSTITUTIONAL CONVENTION
4 OF THE
5 STATE OF MARYLAND
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10 Chamber of the House of Delegates
11 State Capitol
12 Annapolis, Maryland
13 December 19, 1967 - 2:10 p.m.
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18 HONORABLE H. VERNON ENEY,
19 PRESIDENT
20

21 REPORTED BY:
Dorothy Fitzgerald
6

1 AFTERNOON SESSION

2 December 19, 1967 - 2:10 p.m.

3 THE PRESIDENT: The Sergeant at Arms will clear
4 the aisles and close the doors.

5 The convention will please come to order.

6 The Invocation will be offered by the Reverend
7 Howard M. Amoss, Easton District Superintendent of the
8 Methodist Church from Easton, Maryland. He is Delegate
9 Marvin Smith's minister.

10 Reverend Amoss.

11 REVEREND AMOSS: Our Heavenly Father, we stand to
12 recognize that the whole earth is the Lord's and the full-
13 ness thereof, the world and they that dwell therein. As
14 flowers turn their faces to the sun, help us to turn to
15 Thee. As trees draw their life from the bounty of earth
16 and sky, help us to draw upon the holiness of Thy presence.
17 Help us to know that Thou, whose eye is ever upon the
18 sparrow, art ever watching over this Constitutional
19 Convention.

20 O giver of all gifts, make these delegates
21 equal to the serious and historic demands upon them.

1 Make them to become answers to the many problems they face.
2 Make their best vision of mercy and truth so real that
3 they will follow the highest and give their best. Imbue
4 them with the insight to read Thy purposes in the facts
5 and the events before them. Lead them to follow a lasting
6 faith in mankind even when it is not given man to see all
7 the way. Grant that they may be given the glory of lighted
8 minds to think out a worthy Constitution, serving with
9 skill and anointed with Thy concern. Grant them daily
10 hope and courage, eyes to see, ears to hear, walking before
11 Thee in the way of Thy laws and the words of Thy Command-
12 ments.

13 O Divine Providence, guide our state and our
14 nation. Deliver us from evil, turn us from pitfalls and
15 keep us on the highway of a righteous vocation, until our
16 work is truly done. For Thine is the kingdom and the
17 power and the glory, from ages to ages, and sealed in truth.
18 In Thy Spirit we pray. Amen.

19 THE PRESIDENT: Roll call.

20 (Thereupon, the roll was called.)

21 THE PRESIDENT: Has every delegate answered the
roll call?

1 A quorum being present, the Convention is in
2 session.

3 The very handsome floral display on the rostrum
4 is the Christmas gift to the Convention from Delegates
5 Audrey Cicone and Anne D. Hopkins. I thank them both
6 very much.

7 Delegate Sickles.

8 DELEGATE SICKLES: Mr. President, I rise on a
9 point of personal privilege.

10 THE PRESIDENT: State the privilege.

11 DELEGATE SICKLES: In the gallery opposite the
12 President are thirty seniors from Northwestern High School
13 and with them is their teacher, Mrs. Barbara Goldstein,
14 and I know the Convention will want to extend their
15 usual warm greetings. (Applause.)

16 THE PRESIDENT: Delegate Freedlander.

17 DELEGATE FREEDLANDER: Mr. President and
18 Fellow Delegates, I should like this group to welcome in the
19 gallery above the rostrum Mrs. Samuel Richelman and her
20 two children, students of Park School.

21 THE PRESIDENT: Delegate Barrick.

1 DELEGATE BARRICK: Mr. President and Ladies and
2 Gentlemen of the Convention, I should like you to welcome
3 my wife, Joan J. Barrick, my son, Paul Barrick, and my
4 daughter, Linda Barrick, and also James P. Mause, Chief
5 Clerk of the House of Delegates. (Applause)

6 THE PRESIDENT: Delegate Penniman.

7 DELEGATE PENNIMAN: Mr. President, I would like
8 this group to welcome if they would a distinguished
9 professor and educator, a former chairman of the political
10 science department of the University of Minnesota, a former
11 president of the League of Women Voters in the State of
12 Wisconsin, a former president of the Midwest Political
13 Science Association, and the most distinguished political
14 scientist in the Penniman family, my sister, Claire Penniman
15 of the University of Wisconsin. (Applause)

16 THE PRESIDENT: Delegate Rush.

17 DELEGATE RUSH: Mr. President, I rise on a point
18 of personal privilege.

19 THE PRESIDENT: State the privilege.

20 DELEGATE RUSH: It gives me a great deal of
21 pleasure to introduce to you a gentleman's son who I served

1 with in the House of Delegates for two sessions, David
2 Hickman, the son of David Carter Hickman. He is a graduate
3 of Harvard Law School. He is presently a clerk to the
4 Chief Judge of the circuit court. (Applause)

5 THE PRESIDENT: Delegate E. J. Clarke.

6 DELEGATE CLARKE: Mr. President and Ladies and
7 Gentlemen of the Convention, I have a communication from Mrs.
8 Tift's Civics Class Kensington Junior High:

9 "Dear Mr. Clark,

10 "After reading in the newspaper that the
11 Constitutional Convention wanted high schools to submit
12 preambles, our class decided to write one. We think our
13 preamble is good because it short and to the point. We
14 hope you will find it interesting and perhaps consider
15 using it.

16 "Thank you for your consideration."

17 Mr. President and Ladies and Gentlemen, this
18 is what the class wrote:

19 "We, the citizens of Maryland, adopt this
20 constitution to define our freedoms, insure our rights,
21 liberties, and to maintain the general welfare; in order to

1 form a more united state."

2 I thank you. (Applause)

3 THE PRESIDENT: I regret to advise you that the
4 first vice-president of the Convention met with a mishap
5 yesterday working around his home. He slipped as a result
6 of which a heavy battery fell on his hand, broke several
7 bones in his right hand, and lacerated it pretty badly.

8 He is in the hospital receiving antibiotic
9 treatment to prevent infection. Mrs. Clark tells me the
10 doctor will keep him there the rest of this week, so that
11 he will not return to the Convention until after Christmas.

12 I have a belated announcement that should be
13 entered on the journal. I will ask the reading clerk to
14 read it.

15 MR. QUILLEN: Please enter on the journal that
16 pursuant to the mutual request of Delegate Joseph L. Johnson
17 and Delegate J. Hardin Marion, on December 6, 1967, I made
18 the following changes in their committee assignments.

19 Delegate Joseph L. Johnson is transferred from the
20 Committee on Style, Drafting and Arrangement to the Committee
21 on Calendar and Agenda.

1 Delegate J. Hardin Marion is transferred from
2 the Committee on Calendar and Agenda to the Committee on
3 Style, Drafting and Arrangement.

4 Delegates Johnson and Marion will both remain
5 as members of the Committee on the Judicial Branch.

6 THE PRESIDENT: Reports of committees.

7 Before receiving reports, the Chair recognizes
8 Chairman Powers, Chairman of the Committee on Calendar and
9 Agenda.

10 DELEGATE POWERS: Mr. President, I move the
11 adoption of today's calendar.

12 (Seconded)

13 THE PRESIDENT: All in favor, signify by saying
14 Aye; contrary, no.

15 The Ayes have it, and it is so ordered.

16 Report of the Committees.

17 Report of S&D-6 of the Committee on Style,
18 Drafting and Arrangement.

19 MR. QUILLEN: Committee on Style, Drafting and
20 Arrangement Report No. S&D-6. The report covers matters in
21 Committee of the Whole Report No. 6.

1 A Report concerning Committee Recommendation
2 No. GP-3.

3 The Committee on Style, Drafting and Arrange-
4 ment recommends that the Committee Recommendation No. GP-3
5 read as indicated in the attached recommendation.

6 The words "environment" and "resources" were
7 transposed to emphasize the point made in the Committee
8 of the Whole that it was the natural environment and not
9 the man-made environment which was to be conserved.

10 THE PRESIDENT: The report is referred to the
11 Committee on Calendar and Agenda.

12 Any other reports?

13 Memorandum from Delegate Gallagher, Chairman
14 of the Committee on Legislative Branch.

15 The clerk will read the memorandum.

16 MR. QUILLEN: A reply memorandum to all delegates
17 from Francis X. Gallagher, Chairman of the Committee on
18 Legislative Branch.

19 Subject: Arguments for single-member legislative
20 districts (in reply to the recent memorandum supporting
21 three-man, multi-member districts).

1 THE PRESIDENT: Any other reports, Mr. Clerk?

2 MR. QUILLEN: There are no other reports.

3 THE PRESIDENT: Item 7. Motions and resolutions.

4 Item 7 is a motion by Delegate Johnson for a motion to
5 reconsider. That will not be taken up at this time, but
6 it will be taken up at an hour to be stated. Later in
7 the session the Chairman of the Committee on Calendar and
8 Agenda will move that this item be made a special order of
9 business at a stated hour tomorrow. This is a reconsidera-
10 tion of a vote taken on second reading. Because of that
11 fact, it will not be subject to further reconsideration
12 except upon compliance with the provisions of the rule.
13 It is therefore desirable that every delegate be present
14 at the time the vote to reconsider is considered. It is
15 for that reason that it will be made a special order of
16 business.

17 Any other motions or resolutions?

18 The Chair recognizes Delegate Powers.

19 DELEGATE POWERS: Mr. President, I move that
20 the Convention resolve itself into a Committee of the Whole
21 for the purpose of considering general orders of the day.

1 THE PRESIDENT: Is there a second?

2 All in favor, signify by saying Aye; contrary,
3 No.

4 The Ayes have it, and it is so ordered.

5 (The mace was removed by the Sergeant at Arms.)

6 (Whereupon, at 2:20 p.m., the Convention
7 resolved itself into the Committee of the Whole.)

8 THE CHAIRMAN: The Committee of the Whole will
9 please come to order.

10 We resume consideration of Committee recommend-
11 ing GP-6. Prior to the last adjournment we had considered
12 Sections 1, 2, 3, 4, and 5. We now come to a consideration
13 of Section 6; under the debate schedule, Sections 6, 7, and
14 8 to be considered together.

15 The Chair recognizes Delegate Wheatley, Vice
16 Chairman of the Committee.

17 DELEGATE WHEATLEY: Mr. Chairman, we have at
18 this time ^{an} amendment to offer which we would substitute in
19 lieu of the original language, Amendment MM.

20 THE CHAIRMAN: Pages will please distribute
21 Amendment MM.

This will be Amendment No. 9.

1 The Clerk will read the amendment.

2 MR. QUILLEN: Amendment No. 9 to Committee
3 Recommendation No. GP-6 by Delegates Boyer, Wheatley,
4 Blair, Caldwell, E. J. Clarke, Jett, Key, Kirkland, Lord,
5 Pullen, Ritter, Robie, Singer, Sosnowski, Vecera:

6 On pages 2 and 3, strike out all of Sections 6,
7 7, and 8, comprising lines 28 through 50, inclusive, on
8 page 2 and lines 1 through 6, inclusive, on page 3; and
9 insert in lieu thereof the following:

10 "Section _____. Higher Education

11 The governing boards provided by law for the
12 University of Maryland, the State Colleges and all other
13 state institutions of higher education, including community
14 colleges, shall formulate policies for their respective
15 institutions and shall have general supervision thereof
16 in all academic matters. Such boards may by law be granted
17 such additional powers of supervision, direction and
18 control of their respective institutions and the expenditure
19 of the funds thereof as the General Assembly may deem to be
20 appropriate."

21 THE CHAIRMAN: The amendment having been duly

1 submitted and seconded by the co-sponsors, the Chair
2 recognizes Delegate Wheatley to speak to the amendment.

3 DELEGATE WHEATLEY: Mr. Chairman and Ladies and
4 Gentlemen of the Convention, in the mood of the holiday
5 spirit which has pervaded this Body, members of the minority
6 and majority met over the weekend with representatives of
7 some of the institutions of higher education in order to
8 avoid prolonging the masochistic proceedings that have
9 accompanied some of the discussions of our last report
10 and in considering the recommendations that were made,
11 we thought it would be highly inappropriate to attempt
12 a detailed presentation on higher education since we had
13 not, in our last meeting, accorded the same recognition
14 to the elementary and secondary schools.

15 Further wishing to avoid essentially the last
16 week of the Convention being engaged in long debate on many
17 technical points, we at great length concluded that it
18 would be much more sensible to recognize that which the
19 majority and minority have recognized at the outset, the
20 following essentials, one that the boards of the institu-
21 tions of higher education have recognized as the mode of

1 government for institutions of higher learning; secondly,
2 that the existing types of institutions of higher learning
3 be recognized, that being the University of Maryland, the
4 State colleges, and the community colleges; and finally,
5 that it is indeed a real necessity to preserve freedom in
6 academic matters as expressed by this language; and finally,
7 that this should be interpreted from time to time by the
8 General Assembly and that it would be limited only to the
9 extent that they would be unreasonable in their interpreta-
10 tion as a Court might determine.

11 Therefore, with those very real theoretical
12 matters as well as the practical matter of not having
13 enough votes (laughter) we again decided that it would
14 be unfair and unwarranted for those who had pursued the point
15 in great detail to pursue that same debate through the
16 balance of this week or at least through the balance of
17 this day and for that reason I sincerely recommend to you
18 for your consideration the language of Amendment MM, which it
19 will be moved to be substituted for the more detail pro-
20 visions and we will trust that this Convention sitting as
21 a Committee of the Whole would reaffirm its faith in higher

1 education and thereby support this unanimous proposal.

2 THE CHAIRMAN: Is there any discussion?

3 Delegate Maurer.

4 DELEGATE MAURER: I have a question for Mr.
5 Wheatley, please, for clarification.

6 THE CHAIRMAN: Delegate Wheatley, do you yield
7 to a question?

8 DELEGATE WHEATLEY: I will be happy to yield.

9 THE CHAIRMAN: Delegate Maurer.

10 DELEGATE MAURER: In Amendment MM, line 11, you
11 say all other State institutions of other education includ-
12 ing community colleges and I would like to ask you to define
13 State in that phrase because community colleges are local
14 colleges, the property is held in the name of local boards,
15 their budgets go through the county budgets, they are not
16 State institutions in the sense of the university or the
17 State colleges.

18 THE CHAIRMAN: Delegate Wheatley.

19 DELEGATE WHEATLEY: I am very glad you raised
20 that question because I think it should be clearly stated.
21 The reference "and all other State institutions of higher

1 education" allows the expansive quality that would be
2 required for a Constitution in case there would be others.
3 We don't want to state that the three we are enumerating
4 are exclusive and then the next clause "community college"
5 in no way attempts to alter the structure of community
6 colleges. They are institutions of local boards rather than
7 a state institution of higher learning.

8 However, since the State of Maryland has recog-
9 nized them for many purposes as a State institution of
10 higher learning and since the State contributes at the
11 present time between fifty and seventy-five per cent of
12 their construction costs in various forms and also contrib-
13 utes indirectly to aid in their OGG programs, we thought
14 we should be accorded the recognition of State institutions
15 of higher learning. They would be institutions of the State
16 engaged in higher learning. It is not a capital "s".

17 THE CHAIRMAN: Delegate Maurer.

18 DELEGATE MAURER: Would the word "State" be
19 similar to public institution so we would not be confronted
20 with an interpretation that community colleges are prohibited
21 from the benefits of this section because they are deemed

1 to be local rather than State? Would it be fair to read
2 that as public institutions of higher education?

3 THE CHAIRMAN: Delegate Wheatley.

4 DELEGATE WHEATLEY: I think that is one way of
5 reading it. We certainly couldn't be doing anything at this
6 point with private schools and I think the definition of
7 State that the Committee has adopted and this was done
8 many, many weeks ago that State would be a broad term
9 embracing all institutions of higher learning over which
10 the State had control, not meaning that they would be State
11 institutions with a capital "S".

12 THE CHAIRMAN: Delegate Case.

13 DELEGATE CASE: Mr. Chairman, since the language
14 that we have before us seems to be that of the minority and
15 with the greatest of deference and respect to the Chairman
16 of the Committee, I am wondering if the spokesman of the
17 minority would take the floor and yield to a question.

18 THE CHAIRMAN: Delegate Lord, would you take
19 the floor and yield to a question?

20 DELEGATE LORD: Certainly.

21 THE CHAIRMAN: Delegate Case.

1 DELEGATE CASE: Delegate Lord, I notice in line
2 15 the words "in all academic matters", and I am wondering
3 whether or not you could give us a broad brush definition
4 of what your group had in mind with the words "in all
5 academic Matters".

6 THE CHAIRMAN: Delegate Lord.

7 DELEGATE LORD: I will try to, Delegate Case.
8 It won't be a precise definition, but perhaps I could give
9 you some examples that the minority had in mind, at least.

10 This would certainly cover the courses to be
11 offered at these institutions or the courses not to be
12 offered.

13 It would control who taught those course whether
14 these professors were controversial or not would also apply
15 to who would be invited to speak at the institutions.

16 THE CHAIRMAN: Delegate Case.

17 DELEGATE CASE: Leaving out the finances of
18 the program, would it cover the right of the University of
19 Maryland, for example, to install a new program such as
20 the recently initiated College of Architecture?

21 THE CHAIRMAN: Delegate Lord.

1 DELEGATE LORD: Leaving aside, as you say, the
2 budgetary aspects of it, yes, it would.

3 THE CHAIRMAN: Delegate Case.

4 DELEGATE CASE: Would it also involve the right
5 of an institution to abandon a course of study if it felt
6 that was in the best interest of the people?

7 THE CHAIRMAN: Delegate Lord.

8 DELEGATE LORD: The answer is yes.

9 THE CHAIRMAN: Very well.

10 Delegate Frank Robey.

11 DELEGATE ROBEY: Mr. Chairman, I would like to
12 direct my question to Delegate Wheatley.

13 THE CHAIRMAN: Delegate Wheatley, would you take
14 the floor to yield to a question?

15 DELEGATE WHEATLEY: I would be glad to, Mr.
16 Chairman.

17 THE CHAIRMAN: Delegate Robey.

18 DELEGATE ROBEY: In line 9, the phrase "the
19 governing boards provided by law" causes me some difficulty
20 inasmuch as this presupposes that there shall be governing
21 boards, but I can find nowhere in the Constitution where such

1 boards are constitutionally mandated.

2 Is it your interpretation that this does in
3 fact constitutionally mandate governing boards for the
4 institution of governing boards for the State?

5 THE CHAIRMAN: Delegate Wheatley.

6 DELEGATE WHEATLEY: The intent of the Committee
7 and perhaps stylistically this can be changed in second
8 reading to read that line "there shall be governing boards
9 provided by law for the University of Maryland", and so
10 forth, and this was in the light of the fact that the
11 executive article had made provision for exception and
12 thereby the provision for elementary and secondary
13 complemented the executive article we thought this would
14 be the complementary section with regard to higher educa-
15 tion. It was the understanding of the Committee that this
16 line did determine governing boards as the mode of govern-
17 ing the agencies and by law would apply to the flexibility
18 in constituting such boards.

19 THE CHAIRMAN: Delegate Frank Robey.

20 DELEGATE ROBEY: As I understand your comments,
21 the minority and majority are in complete agreement that

1 there shall be governing boards, that is the intent of this
2 phrase and if it is necessary to change it stylistically
3 to read it that way, this change will be made.

4 THE CHAIRMAN: Delegate Wheatley.

5 DELEGATE WHEATLEY: Yes.

6 THE CHAIRMAN: For what purpose does Delegate
7 Lord rise?

8 DELEGATE LORD: Mr. Chairman, I would like to
9 expand briefly on that answer.

10 THE CHAIRMAN: You may proceed.

11 DELEGATE LORD: Delegate Robey, with specific
12 reference to community colleges, as you know there is no
13 State governing board of community colleges now. There is
14 some discussion along these lines. It is not the intention
15 of either the majority or the minority to require the
16 creation of governing boards for community colleges.
17 Should this happen, this language would become effective.

18 THE CHAIRMAN: Delegate Hanson.

19 DELEGATE HANSON: Mr. Chairman, I have a
20 question for the Vice Chairman of the Committee or for
21 Mr. Lord.

1 THE CHAIRMAN: Delegate Wheatley, do you respond
2 to a question?

3 DELEGATE WHEATLEY: I will be glad to.

4 THE CHAIRMAN: Delegate Hanson.

5 DELEGATE HANSON: Would it be possible under
6 the language which is before us here in this amendment for
7 the General Assembly to re-organize the university and
8 college system in Maryland without resorting to constitu-
9 tional amendment to do so.

10 For instance, to establish a State university
11 system if in its wisdom decided that would be a more
12 appropriate organization.

13 THE CHAIRMAN: Delegate Wheatley.

14 DELEGATE WHEATLEY: Assuming I understand the
15 same meaning you give to re-organization that I do, my
16 answer would be yes. The flexibility is there providing
17 that the mode of governing of any State institution of higher
18 learning would be by board.

19 THE CHAIRMAN: Delegate Hanson.

20 DELEGATE HANSON: I would like to ask you or
21 Delegate Lord or perhaps both of you if there is any great

1 reason to be served in enumerating the institutions in this
2 section, the University of Maryland, the State colleges,
3 the community colleges, or if it might not do to simply
4 say all State institutions of higher learning.

5 THE CHAIRMAN: Delegate Wheatley.

6 DELEGATE WHEATLEY: In response to the inquiry,
7 this specific proposal was made and the Committee, both
8 majority and minority, were both in essential agreement on
9 the particular element that the existing structure should
10 not be frozen, but there should be recognition afforded the
11 university since it was testified to by many witnesses that
12 this does have a very therapeutic effect if I might use that
13 term enlisting staff, faculty, and also getting support
14 from government agencies, that constitutional recognition
15 is certainly something that is helpful to the university
16 and since it did not create any problems with the expansion
17 allowed in other institutions that we thought this would
18 be preferable to the generic description.

19 THE CHAIRMAN: Delegate Maurer.

20 DELEGATE MAURER: I have a question for Mr.
21 Lord, please.

1 THE CHAIRMAN: Delegate Lord, do you respond to
2 a question?

3 DELEGATE LORD: Yes, sir.

4 THE CHAIRMAN: Delegate Maurer.

5 DELEGATE MAURER: I think it is important that
6 we perhaps check the record. Is it not true that the
7 community colleges are governed by boards of trustees for
8 each college in each community?

9 THE CHAIRMAN: Delegate Lord.

10 DELEGATE LORD: Yes.

11 THE CHAIRMAN: Delegate Maurer.

12 DELEGATE MAURER: Therefore, your reference to
13 a governing board then was a reference to a separate State
14 board in community colleges in lieu of the coordinating
15 services offered by State board of education?

16 THE CHAIRMAN: Delegate Lord.

17 DELEGATE LORD: That is correct. Any statement
18 to the contrary I would like to correct.

19 THE CHAIRMAN: Delegate Case.

20 DELEGATE CASE: Mr. Chairman, on a little
21 different subject to Delegate Lord if he will yield.

1 THE CHAIRMAN: Delegate Lord, do you yield to
2 a question?

3 DELEGATE LORD: Certainly.

4 THE CHAIRMAN: Delegate Case.

5 DELEGATE CASE: Delegate Lord, of course you
6 and I both know but perhaps some of the delegates have not
7 picked it up at this point precisely.

8 What we have here is a significant omission
9 from the majority report, namely, the right of fiscal
10 self management given to the University of Maryland and to
11 the other institutions of higher learning, the community
12 colleges.

13 It is true, is it not, that the University of
14 Maryland is the only institution in the State which has this
15 right at the present time?

16 THE CHAIRMAN: Delegate Lord.

17 DELEGATE LORD: That is correct.

18 THE CHAIRMAN: Delegate Case.

19 DELEGATE CASE: Is the omission of this language
20 in the minority report to be interpreted as in any way
21 condemning the present statutory right of self management
that the university has or in any way critical of it?

1 THE CHAIRMAN: Delegate Lord.

2 DELEGATE LORD: Absolutely not. I think it is
3 the opinion of the Committee that absolute autonomy under
4 the Constitution has worked well and it is certainly not
5 the intention of the Committee to detract from it or alter
6 it in any way.

7 THE CHAIRMAN: Delegate Marion.

8 DELEGATE MARION: I have a question to either
9 Delegate Wheatley or Delegate Lord.

10 THE CHAIRMAN: Delegate Wheatley, do you respond
11 to a question?

12 DELEGATE WHEATLEY: Yes.

13 THE CHAIRMAN: Delegate Marion.

14 DELEGATE MARION: In line 9, the words "by law"
15 are used. They are used again in line 16 and in line 19
16 General Assembly is mentioned. Is "by law" in line 9
17 meant to mean the General Assembly by law or since you
18 include community colleges, could the words "by law" be
19 considered as covering both an action of the General
20 Assembly and an action of a county through its governing
21 body?

1 THE CHAIRMAN: Delegate Wheatley.

2 DELEGATE WHEATLEY: I would say the by law
3 refers to the General Assembly in that they would be
4 primarily responsible for the institutions enumerated and
5 that any effect it would have on community colleges would
6 be by an act of the General Assembly rather than by charter.

7 However, if you can think of any problems that
8 can be related there, it was not meant to be deleterious
9 to any existing community colleges but rather complimentary.

10 THE CHAIRMAN: Delegate Marion.

11 DELEGATE MARION: So in both places where by
12 law is used it would mean by law of the General Assembly?

13 THE CHAIRMAN: Delegate Wheatley.

14 DELEGATE WHEATLEY: This was the basic intent,
15 yes.

16 THE CHAIRMAN: Delegate Penniman.

17 DELEGATE PENNIMAN: I don't mean to prolong the
18 discussion or go over the territory too often, but I still
19 have a question about the community colleges if I could
20 address it to either Delegate Wheatley or Delegate Lord.

21 THE CHAIRMAN: Delegate Wheatley, do you respond

1 to a question?

2 DELEGATE WHEATLEY: Yes.

3 THE CHAIRMAN: Delegate Penniman.

4 DELEGATE PENNIMAN: In the two discussions of
5 the board, as I understand it, a board was not mandated
6 for the community colleges.

7 On the other hand, there are the local boards
8 which already exist for the community colleges. Would
9 the General Assembly be free to change from the local boards
10 to a general board if they so chose?

11 THE CHAIRMAN: Delegate Wheatley.

12 DELEGATE WHEATLEY: This would not be a restrict-
13 ion. The only restriction is that the type or regulation
14 or government of the institution shall be by board. It
15 does not say whether it shall forever be mandated local or
16 state. This was not intended to be mandated. It is a
17 decision to be made by the local government or the General
18 Assembly which would be provided for some time in the
19 future I would say.

20 THE CHAIRMAN: Delegate Penniman.

21 DELEGATE PENNIMAN: If the General Assembly

1 decided it could move from the existing series of local
2 boards to one general board which controlled all or
3 directed all of the community colleges?

4 THE CHAIRMAN: Delegate Wheatley.

5 DELEGATE WHEATLEY: This will be a decision made
6 by the General Assembly, but it must be a board. That
7 would be the only limitation.

8 THE CHAIRMAN: Delegate Maurer.

9 DELEGATE MAURER: A question for Chairman
10 Wheatley, please.

11 THE CHAIRMAN: State the question.

12 DELEGATE MAURER: Is it not true that there is
13 considerable difference in the government of community
14 colleges as compared or contrasted to the University of
15 Maryland in the State colleges in that even in the legisla-
16 tion which was considered last year and which will come out
17 of a legislative council this year for the community
18 colleges sees a State board which would be a coordinating
19 board working with the local boards or trustees much the
20 way the State board works with the local boards of educa-
21 tion, whereas the regents and the trustees of the State

1 colleges actually operate the university and the colleges
2 so that it is not necessary to move from local community
3 college boards to a State board, but that a combination
4 is envisioned and that this article would allow for such
5 a combination?

6 THE CHAIRMAN: Delegate Wheatley.

7 DELEGATE WHEATLEY: I couldn't agree with you
8 more. There are many differences between the various
9 boards of higher education and in answer to your specific
10 question that this would allow the greatest flexibility in
11 any direction, the final determination would be who governs
12 the institution and that would be made by the legislature
13 and/or in conjunction -- a local instrument of government
14 and from that point once it had been determined it would
15 then be essential that a board would carry out the
16 governing of that particular institution of higher learning.

17 THE CHAIRMAN: Delegate Pullen.

18 DELEGATE PULLEN: I may have to make a brief
19 statement to get my question. It is not controversial.
20 I think Delegate Robey's statement has clarified the real
21 issue here, the naming of the different boards for the

1 different colleges.

2 I would like to ask Mr. Lord one or two questions.
3 One or two of them may be facetious.

4 I think in one of your answers you said, Mr.
5 Lord, that community colleges do not have autonomy. Is it
6 not true that the community colleges have more autonomy
7 than the State colleges or the University of Maryland?
8 I will tell you the answer is yes.

9 THE CHAIRMAN: Delegate Lord.

10 DELEGATE LORD: I don't think I made the state-
11 ment that they don't have autonomy. The statement I did
12 make is that there is not presently a statewide coordinating
13 board that has autonomy.

14 THE CHAIRMAN: Delegate Pullen.

15 DELEGATE PULLEN: I just want to clear up that
16 point. Coming back to the question that Mr. Robey answered
17 has satisfied most of it. I have just one or two questions
18 of Delegate Lord because teachers have been castigated a
19 bit. Are not six of the seven minority members lawyers?

20 THE CHAIRMAN: Delegate Lord.

21 DELEGATE LORD: By quick calculation, I think

1 that is correct.

2 THE CHAIRMAN: Delegate Pullen, you have time
3 for one more question.

4 DELEGATE PULLEN: I have two of them. I will
5 ask one now and the other one later.

6 Do you know what Tallyrand said when he said
7 that: War is too important to be left to the generals?

8 THE CHAIRMAN: Delegate Lord.

9 DELEGATE LORD: I assume that he meant exactly
10 what he said, but I would appreciate your interpretation of
11 it.

12 THE CHAIRMAN: Delegate Pullen.

13 DELEGATE PULLEN: That is what I was hoping you
14 would ask because we have heard Tallyrand prostituted the
15 other day in the field of education. What Tallyrand meant,
16 sir, was this, was that war was so important that the
17 generals shouldn't interfere with what the politicians
18 wanted to do.

19 I hope that is not too subtle with respect to
20 the comment we heard the other day that education is too
21 important to be left to the educators.

1 THE CHAIRMAN: Delegate Bard.

2 DELEGATE BARD: If this proposal were to go
3 through, I think it would be a great moment in the history
4 of our education in Maryland and would enforce the Marbury
5 report, the Pullen report, and the Corlet reports which
6 are documents of high esteem in higher education; it gives
7 the colleges the flexibility they need and the stature they
8 deserve.

9 THE CHAIRMAN: The question arises on the adopt-
10 ion of Amendment No. 9. A vote Aye is a vote in favor of
11 the amendment. A vote No is a vote against.

12 Cast your votes.

13 Has every delegate voted? Does any delegate
14 desire to change his vote?

15 The clerk will record the vote. There being
16 124 votes in the affirmative and none in the negative, the
17 motion is carried. The amendment is adopted.

18 That concludes consideration of 6, 7, and 8.
19 We proceed to a consideration of Section 9. The Chair
20 recognizes Delegate Wheatley, Vice Chairman of the Committee.
21 Delegate Case.

1 DELEGATE CASE: Mr. Chairman, a point of
2 personal privilege.

3 THE CHAIRMAN: State the privilege.

4 DELEGATE CASE: Mr. Chairman, because so much
5 has been said to the members of this Convention with respect
6 to the subject we have just happily disposed of, and because
7 I think there has been in some cases misconception and in
8 others a misunderstanding about the position of the
9 University of Maryland in regard to it, I should like to
10 state, if I might briefly, that position.

11 THE CHAIRMAN: You may proceed.

12 DELEGATE CASE: Mr. Chairman and Ladies and
13 Gentlemen of the Convention, as you all must know by now,
14 I approach you in this particular light not as an impartial
15 observor, but as, I suppose, a special pleader. I am a
16 member of the Board of Regents of the University of Maryland,
17 but my interest in the university long antedates my
18 appointment to the Board in 1960. I was a graduate of the
19 undergraduate school in College Park and of the law school
20 in Baltimore. I taught at the law school for fifteen
21 years and I lived the first twenty-two years of my life

1 within the shadow of its gates and it is for this reason
2 that I would like to talk with you just for a minute about
3 the meaning of the right of fiscal management which has
4 sometimes been called autonomy, what it is, and why the
5 university sought it at this Convention.

6 In the first place, we are not talking here
7 about autonomy in the usual definitional sense. Autonomy
8 means the right of self government and at no time did the
9 university request this kind of right. The right to
10 manage the fiscal affairs of the university and only that
11 right was sought by the Board of Regents. The right did
12 not cover as has been suggested to me from time to time
13 the right to deal in capital expenditures.

14 The right did not cover as has been suggested
15 to me from time to time the ability of the Governor to cut
16 the budget of the University of Maryland if he thought
17 that he should do so.

18 The right did not include as has been suggested
19 to me more often than not a prevention of the General
20 Assembly from cutting the budget of the university submitted
21 to him by the Governor.

1 Now, I have on my desk the present budget of
2 the university and the proposed budget for the coming year.
3 I think that the delegates should know that these budgets
4 involve very substantial sums of money.

5 Last year, for example, the working budget of
6 the university was just over seventy-one million dollars.
7 This year the Board of Regents requested a working budget
8 of eighty-three million dollars, but the point I seek to
9 make is that only last Friday the Governor of Maryland cut
10 the requested increases of some nine million dollars by
11 six million, approximately six million dollars. The
12 largest budget cut that the university has ever experienced
13 in its existence.

14 What the right of self management would have
15 done and does do under the statute which now obtains is to
16 give to the administration of the university the right to
17 allocate within a program funds which have been set aside
18 on a line item basis.

19 The university does not have nor has it ever
20 exercised the right to allocate between the thirteen major
21 programs contained in its budget. All that the right would

1 have done, if it had been granted constitutionally, would
2 have been to permit, as I have said before, within one
3 program the university to allocate or to re-allocate in a
4 different manner than the way in which the budget was
5 originally prepared.

6 Now, why is this important? It is important for
7 two reasons: 1, it secures to the university the right
8 to keep faith with its instructional staff.

9 As you all probably know, to obtain qualified
10 people to teach in our institutions of higher learning
11 today is a herculean task. You just can't find good
12 qualified instructors and when you get them, the time often
13 comes when their salaries have to be increased. The
14 university has exercised its right of fiscal self manage-
15 ment from time to time to do this very thing.

16 In one important case of note, it was able to
17 keep perhaps the best brains in the field of solid state
18 physics on the campus of the university for a period of
19 twelve years. This man now heads one of the leading
20 graduate schools in this country, but it was through fiscal
21 autonomy that we were able to keep this man in Maryland for
the benefit of the Maryland children that we sent to that

1 university for that period of time.

2 In another area we find that the university is
3 competing daily with other employers for administrative
4 staff, secretaries, bookkeepers, time punch operators, and
5 the whole array of people who go to make up this vast
6 institution. The university is constantly in competition
7 with big employers at College Park such as the Federal
8 Government, many manufacturers in that area, and this right
9 of self management permits an adjustment of the pay scale
10 for these people without the necessity of going through
11 all the rigors of a budget amendment and all of the red tape
12 that this involves.

13 The first field is research. It might interest
14 the delegates to know that the University of Maryland
15 today will conduct and is conducting a research program of
16 something in excess of twenty million dollars. There is
17 no place in the State of Maryland that this program does
18 not reach. It reaches the Chesapeake Bay, the tobacco
19 farmer, the corn farmer, the wheat farmer, business, econ-
20 omics, it reaches medicine, it reaches dentistry, and law,
21 and all phases of life in our State.

1 This right has permitted the university to
2 secure more grants than any other institution save Johns
3 Hopkins in this area.

4 These, then, were the reasons why the university
5 came to this Convention and sought constitutional recogni-
6 tion of the right.

7 I should like to say two additional things about
8 this subject. One is that it is a devisive subject. I
9 think, Mr. Chairman, you and I have been associated in var-
10 ious matters for a period of twenty years and I think it
11 is fair to say, sir, that this is the only thing in which
12 we found ourselves on the opposite ends of the poles.

13 I should also like to point out to you and each
14 of you that the university has not through any of its
15 employees or agents or people that it might influence sought
16 one vote on this convention floor for this proposition.

17 I have answered questions when people have
18 asked me, but I think it is, I hope it is, helpful to you
19 that this matter was brought to you for your consideration
20 without the pressure, without the tactics that might have
21 been employed and without the systematic buttonholing of

1 delegates and all the rest of the paraphernalia with which
2 many years ago the university was accused of doing and so
3 let me say, Mr. Chairman, that this matter is now concluded.
4 I hope that it is happily concluded. The university still
5 enjoys the statutory right of self management and I should
6 say that we have here in this State a great university.
7 I hope that it will become a greater university, and with
8 the help of God and the General Assembly, it will. (Applause)

9 THE CHAIRMAN: The Chair wants to express its
10 own personal but very, very sincere and deeply felt
11 appreciation to the members of the Committee, both minority
12 and majority and to Delegate Case and others who shared
13 his view for the spirit which brought about the adoption
14 of the amendment and ended what otherwise could have been
15 a very protracted and devisive debate for the Committee of
16 the Whole.

17 I think it augurs well for the entire work of
18 the Convention and I think the sincere thanks of every
19 delegate are due to every one of the members of the Commit-
20 tee, to Delegate Case and to those who felt as he did about
21 the University of Maryland having constitutional autonomy.

1 We appreciate the efforts they have made to bring about
2 this result.

3 Delegate Hopkins.

4 DELEGATE HOPKINS: Thank you, Mr. President.
5 I feel that I should rise at this point on behalf of
6 State colleges because I have been rather quiet on a subject
7 that I know a little more about than the rest of you
8 because I have been rather exposed to it for the last four
9 years.

10 I wish to thank Mr. Case for the very fine
11 explanation he has given all of us as to the problems of
12 managing an institution of higher learning in Maryland in
13 1967 and why fiscal management should be in the hands of
14 the Board of Trustees in order to make the institution the
15 fine institution we all want it to be.

16 The University of Maryland has statutory
17 autonomy and Mr. Case has explained far better than I
18 could what it is and why they need it.

19 I have been interested in seeing that the State
20 colleges have the same thing, some of the State colleges,
21 for example, Morgan and Towson are as old as is the

1 University of Maryland with traditions and fine State
2 programs, but six colleges are new and they do not have
3 statutory autonomy. They are hoping to get it from the
4 Legislature being as we did not see fit to give it to them.
5 Under what has just passed, this could happen as the
6 Legislature sees fit. The six State colleges would also
7 like to be treated the same way because they have important
8 jobs to do at the higher educational level in this State
9 should also be mentioned.

10 Thank you, Mr. Case; Thank you, Mr. President.

11 (Applause)

12 THE CHAIRMAN: I have become so accustomed to
13 thinking of Delegate Bard as one of the educator delegates
14 that I tend to include him as one of the Committee. He is
15 not, but he was one of the delegates who was largely instru-
16 mental in bringing together the opposing views over this
17 past weekend and perhaps more than any other single delegate
18 brought about the meetings from which the happy result has
19 ensued.

20 Delegate Bard, I did not want to overlook those
21 efforts. As you know from what I said to you, we are very

1 deeply grateful for it. (Applause)

2 THE CHAIRMAN: Delegate Hanson.

3 DELEGATE HANSON: Mr. Chairman, as one who has
4 spent a lifetime or an adult lifetime in higher education,
5 I also want to compliment the majority and minority for the
6 fine work that they have done while the Convention has been
7 in recess and I cannot help but compliment Delegate Case
8 for the excellent defense which he has given of fiscal
9 autonomy in universities and can only hope that when the
10 opportunity again arises in the Convention Assembly to give
11 a similar kind of fiscal autonomy to the General Assembly
12 that we will find him on our side in that fight. (Laughter)

13 THE CHAIRMAN: The Chair now recognizes Delegate
14 Wheatley with respect to Section 9.

15 DELEGATE WHEATLEY: Mr. Chairman, if I might for
16 one brief moment in response to the comments made regarding
17 autonomy, I would like to say it was unanimously felt by
18 the Committee that impartial observers who testified before
19 the Committee attested to the fact that the statutory
20 autonomy enjoyed by the University of Maryland since 1952
21 has certainly been handled well. It has been a real

1 advantage to the school in doing the type of educational
2 work that should be done for a university of the State and
3 I can only amplify those remarks that he has made because
4 everyone who will appear, be they members of the university
5 or those who had nothing to do with it, did attest to the
6 fact that it has been a tremendous boon to the work of the
7 university and certainly I share the sympathies and the
8 sentiments expressed by Delegate Hopkins in that respect.

9 At this time in keeping with the spirit of the
10 season, I would now call for Amendment KK which I assume
11 stands for Kris Kringle.

12 THE CHAIRMAN: Absolutely correct.

13 Pages will please distribute Amendment Kris
14 Kringle.

15 The clerk will read Amendment No. 10.
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1 MR. QUILLEN: Amendment No. 10 to Committee
2 Recommendation GP-6 by Delegates Boyer, Wheatley, Blair,
3 Caldwell, E. J. Clarke, Jett, Key, Kirlland, Lord, Pullen,
4 Ritter, Robie, Singer, Sosnowski and Vecera.

5 THE CHAIRMAN: The amendment having been
6 duly made and seconded, the Chair recognizes Delegate
7 Wheatley.

8 DELEGATE WHEATLEY: Mr. Chairman, ladies
9 and gentlemen of the Convention, I shall be brief.

10 In order to put together a document which we
11 believe will be structurally sound as well as in good form,
12 we believe we should have one section so specific in
13 nature, after having much more general sections, and for
14 that reason the majority and minority have joined in their
15 interpretation that the language originally adopted
16 relating to educational institutions and services should
17 include libraries, and therefore at this time it would be
18 somewhat in keeping with that original language to move that
19 the specific inclusion of libraries as distinct from
20 services of education nature should not be separately
21 stated, and I therefore move the adoption related to the

1 striking of Section 9.

2 THE CHAIRMAN: Is there any discussion?

3 Are you ready for the question? The questions
4 arises on the adoption of Amendment 10. A vote Aye is a
5 vote in favor of the amendment; a vote No is a vote against.

6 Cast your vote.

7 (Whereupon, a vote was taken.)

8 THE CHAIRMAN: Has every Delegate voted?

9 Does any Delegate desire to change his vote?

10 The Clerk will record the vote.

11 There being 115 votes in the affirmative and
12 three in the negative, the motion is carried and the amendment
13 is adopted.

14 The question now rises on approval of Committee
15 Recommendation GP-6 as amended. Are you ready for the
16 question?

17 The question arises on the approval of Committee
18 Recommendation GP-6. A vote Aye is a vote in favor of
19 the approval of the Recommendation, a vote No against.

20 Cast your votes.

21 (Whereupon, a vote was taken.)

1 THE CHAIRMAN: Has every Delegate voted?
2 Does any Delegate desire to change his vote?

3 The Clerk will record the vote.

4 There being 123 votes in the affirmative, none
5 in the negative, the Committee Recommendation GP-6 is
6 approved as amended.

7 On behalf of the entire Committee of the Whole
8 the Chair desires to express to Vice Chairman Wheatley
9 and Delegate Lord the very sincere thanks and appreciation
10 of the Convention for a very able presentation on behalf
11 of the Committee and very able presentation of a minority
12 report. We thank you both. (Applause.)

13 The Chair recognizes Delegate Boyer, Chairman
14 of the Committee on General Provisions.

15 DELEGATE BOYER: Mr. Chairman, to your
16 expression of thanks I would like to add my personal
17 thanks to Delegate Wheatley and Delegate Lord, and also
18 to the Committee of the Whole for their assistance in
19 helping steer us through this thorny and sticky thicket
20 of education.

21 I hope that you all feel like we do that we

1 pass this stage with perhaps a sense of relief but
2 certainly of accomplishment, and in recognition of the
3 adroit and articulate manner in which the matter was
4 presented to the Committee of the Whole and symbolic to the
5 entire General Provisions Committee, we thought it would
6 be appropriate at this time to make a small award, and I
7 would like to call upon Delegate Bard at this time to
8 make a presentation to the recipient of the award as
9 symbolic of the adroit manner in which we have worked
10 this out.

11 THE CHAIRMAN: Delegate Bard.

12 DELEGATE BARD: Mr. Chairman, yesterday when
13 we discussed, when some of us discussed this matter, we
14 thought that it might be in order to award an honorary
15 doctorate to Mr. Wheatley.

16 Mr. Lord suggested that I might use my cap and
17 gown, for a number of reasons. First, because it
18 represents the fact that it was used as a graduate of
19 the State College, as I am a graduate of Towson State
20 College. The hood represents a profit college of which
21 I am a graduate, Morgan State.

1 The can represents the University of Maryland
2 for which I have the very highest respect. I did receive
3 my doctorate at the University of Maryland and everything
4 that Mr. Case said about it, just as everything Mr. Hopkins
5 said about the State colleges, certainly holds true.

6 In unison, it represents the triad which I
7 think has been brought together to us in Maryland through
8 the efforts of people like Tom Pullen, who long ago brought
9 the wonderful Pullen Report, and Mr. Marbury, and I
10 would like to add very modestly that the community colleges
11 are very proud as the youngest member of this group to be
12 a part.

13 I have asked Mr. Lord if he would not help me
14 to vest Mr. Wheatley with this honorary degree. (Applause).

15 THE CHAIRMAN: Delegate Wheatley.

16 DELEGATE WHEATLEY: I don't know whether to
17 thank Mr. Boyer for the modified plan or say it certainly
18 makes a difference when the Lord is on your side. (Applause).

19 THE CHAIRMAN: To go to more serious business,
20 the next item on the debate schedule is consideration
21 of Committee Recommendation GP-5.

 The Chair recognizes Delegate Boyer, Chairman

1 of the Committee.

2 DELEGATE BOYER: Mr. Chairman, ladies and
3 gentlemen of the Committee of the Whole, now to go to some
4 less controversial items, I think we have before us now the
5 remaining package of general provision recommendations and,
6 taking them in order, we would start with GP-5, the
7 recommendation of general provisions concerning Federal
8 enclaves.

9 I think that perhaps I have learned very much
10 from this Convention -- for instance, in this field of
11 general enclaves, when I came down here I had no idea
12 of the depth or the material matter involved. I think
13 perhaps it would be safe to say we have perhaps all to
14 some degree been educated in many ways on many things at
15 this Convention.

16 The matter of GP-5 was brought before us as a
17 proposal introduced by Delegate Storn, who seems to have
18 been the father of this particular approach.

19 GP-5 will in effect constitutionalize a matter
20 which is now in statutory code as Article 94, Section 41.
21 This was introduced and passed by the General Assembly in

1 1943.

2 Prior to that time, the General Assembly had
3 approached the matter of Federal enclaves in sort of a
4 piecemeal fashion.

5 I will make this presentation brief, because I
6 can't conceive where there could be too much controversy
7 over this.

8 Prior to 1943 in a piecemeal fashion the General
9 Assembly turned over land to the Federal Government
10 which, of course, by supremacy of the Federal Government
11 would have the right to acquire it either by condemnation
12 or otherwise, and they approached it one time giving
13 lighthouse land to the Federal Government, another time
14 navigational aid land, the highway from Washington to
15 Gettysburg, lots in Price Georges County, some in Cumber-
16 land, a cemetery in St. Marys County, the Custom Houses,
17 and this was just sort of approached in a general hap-
18 hazard method.

19 In 1943, the General Assembly passed Section 47
20 of Article 96, and gave to the Federal Government certain
21 rights but retained for itself, for the State of Maryland,

1 and did not turn over to the Federal Government exclusive
2 jurisdiction. There was retention to the State government
3 on these matters.

4 This will in effect, for the State of Maryland,
5 retain for future purposes in the Constitution all the
6 rights and privileges of the State of Maryland that
7 it has over any other land except those specifically
8 designated as being within the Federal Government juris-
9 diction, and this would be your Recommendation GP-5 which
10 is designed to retain to the State the greatest degree
11 of jurisdiction permitted by Federal law.

12 I would be very happy to answer any questions.

13 THE CHAIRMAN: Are there any questions of
14 the Committee Chairman for purposes of clarification?

15 Delegate Henderson?

16 DELEGATE HENDERSON: This seems to be confined
17 to lands hereafter acquired. Is there a reason for that?
18 Why shouldn't it apply to all that are presently owned
19 by the Federal Government?

20 THE CHAIRMAN: Delegate Boyer.

21 DELEGATE BOYER: Yes, there are many, many

1 lands already acquired by the Federal Government. We
2 would not want to rock the boat and disturb or disrupt
3 what rights they presently have. This has already
4 been accomplished by statutory law and by the suggestion
5 of the General Provisions Committee to include this in
6 the new Constitution to take effect for any future
7 acquired lands.

8 THE CHAIRMAN: Are there any questions of
9 the Committee Chairman?

10 Delegate Carson.

11 DELEGATE CARSON: Chairman Boyer, does the
12 proposed GP-5 add anything whatsoever to the present
13 statutory law contained in Section 47 of Article 86?

14 DELEGATE BOYER: It was not intended. We
15 copied the proposal as recommended by Delegate Storm,
16 who would be an authority on this.

17 Personally, it was not our intention to
18 include anything else, it was so designed to accomplish
19 that, sir.

20 THE CHAIRMAN: Delegate Carson.

21 DELEGATE CARSON: One further question,

1 if I may.

2 I have some little difficulty with your
3 language in that I suggest it may restrict the State
4 from, in the terms of the deed involved, granting
5 additional or less jurisdiction.

6 It seems to me that the terms of the deed
7 will not affect at all what jurisdiction has obtained
8 by this Constitutional provision.

9 Am I correct in that?

10 THE CHAIRMAN: Delegate Boyer.

11 DELEGATE BOYER: Yes, sir.

12 THE CHAIRMAN: Are there any other questions
13 of the Committee Chairman?

14 Delegate Byrnes.

15 DELEGATE BYRNES: Delegate Boyer, in your
16 presentation you said that you want to retain or use
17 to the fullest extent permitted by the law and the
18 Constitution of the United States but refer only to the
19 Constitution of the United States, and I wonder whether
20 or not you mean by "law" the reference to the uses in
21 13, 14 and 15, uses, purposes and functions, whether that

1 implies Federal law. .

2 THE CHAIRMAN: Delegate Boyer.

3 DELEGATE BOYER: That was our intention.

4 Of course, Federal law derives from the Federal
5 Constitution, with the trickle-down theory that any
6 Federal law passed by the Federal Government would be
7 paramount to whatever the State law might provide.

8 THE CHAIRMAN: Delegate Bothe.

9 DELEGATE BOTHE: Is this kind of provision
10 contained in other State Constitutions?

11 DELEGATE BOYER: Touche -- I don't know.
12 I would yield to Delegate Storm on that.

13 THE CHAIRMAN: Delegate Storm, the question
14 was asked whether a similar provision is contained in
15 other State Constitutions.

16 Could you take the floor and reply?

17 DELEGATE STORM: As far as I know,
18 Mr. Chairman, there are no other states with a
19 constitutional provision. This particular original
20 proposal was copied from the West Virginia statute,
21 and I understand a number of other states have similar

1 statutes. However, Delegate Jett and I have an amendment
2 which I believe will clear up the language just a little
3 bit, and I might say that we conferred with some
4 representatives of the Federal Government in arriving
5 at the amendment language which we will submit, but the
6 reason for it being in our Constitution, even if it
7 isn't in any other, is that as a statute, the Legislature,
8 if they passed like they did in the case of Fort
9 Dietrick, or if they pass as they did in the case of
10 the National Institutes of Health, a cession act,
11 it will be interpreted as being a more exclusive ceding
12 than any previous ceding because of this being a
13 statute.

14 Therefore, if it is in the Constitution,
15 it can't be so interpreted, and that is the reason
16 for it being in the Constitution.

17 One further remark, if you will, Mr.
18 Chairman.

19 Another reason why Maryland should pass this
20 and put it in its Constitution, even though we are the
21 first State to do so, this is historically a very proper

1 thing to do because Maryland was the first State that
2 ever ceded any land to the Federal Government, and that
3 land is, of course, what the City of Washington is on
4 now, so it is in keeping with our tradition and with
5 Maryland experience that we should adopt this in the
6 Constitution and take the lead among the states.

7 I am going on at great length, but I have one
8 more remark.

9 Delegate Henderson asked a question as to why
10 we did not include lands prior to this, and I might
11 say that I believe that under an unfortunate decision
12 of the Court of Appeals we couldn't have done this,
13 but the Federal authorities are in hopes that after one
14 Congressman leaves Congress, they will be able to enact
15 a Federal Act to re-cede to Maryland all of the land
16 which we have ceded to them, and then our Legislature
17 would respond by again ceding back to the Federal
18 Government the same lands, with this Constitutional
19 provision.

20 Then all of the people now living on these
21 enclaves would get their full rights, which we can figure

1 no other way to do unless the Court of Appeals reverses
2 itself.

3 THE CHAIRMAN: Are there any other questions?
4 Delegate Sherbow.

5 DELEGATE SHERBOW: Will Delegate Boyer
6 yield for a question?

7 THE CHAIRMAN: Delegate Boyer.

8 DELEGATE BOYER: I would be very happy.

9 DELEGATE SHERBOW: Would the presence of this
10 article in the Maryland Contitution adversely affect
11 Maryland in an attempt, for example, to obtain for
12 our State the Patent Office in competition perhaps
13 with some other State which may have no restrictions?

14 THE CHAIRMAN: Delegate Boyer.

15 DELEGATE BOYER: We would certainly not want
16 to do anything that would adversely affect the State of
17 Maryland. To the best of my knowledge, it would not.
18 In fact, it might put us in a better bargaining position.

19 There is a Supreme Court case, Humble v.
20 Louisiana, I believe it is, where land was ceded to the
21 Federal Government under very similar circumstances that

1 we would have in Maryland now. Exclusive jurisdiction
2 went to the Federal Government, and it is impossible
3 without the acquiescence of Congress to return it back
4 to the States again.

5 This would, for all time, retain to the State
6 of Maryland all the exclusive jurisdiction that is not
7 turned over to the Federal Government, and we certainly
8 have no intention, nor do I believe it would have any
9 deterrent effect in obtaining the Patent Office or any
10 other Federal accommodations.

11 THE CHAIRMAN: Are there any other questions
12 of the Committee Chairman?

13 Delegate Singer.

14 DELEGATE SINGER: Delegate Boyer, under Section
15 4 of RP-2, you have removed the obstacles of voters in
16 United States enclaves to vote in State elections.

17 Other than that and the rights heretofore
18 recognized under the cases by statute, what other rights
19 are involved if we adopt this provision?

20 THE CHAIRMAN: Delegate Boyer.

21 DELEGATE BOYER: I am again going to have

1 to yield to my expert on this matter, Delegate Storm.

2 THE CHAIRMAN: Delegate Storm, can you reply
3 to the question?

4 DELEGATE STORM: I appreciate the Chairman
5 calling me an expert -- I certainly am not. However,
6 I will list you some of the rights which are affected here.

7 The first group of rights are those cited by
8 the majority decision which denied, in a divorce case,
9 the relief sought. The majority opinion in that case
10 said, "The State can't take cognizance of any acts done
11 in the ceded places after the cession. The inhabitants
12 of these places cease to be inhabitants of the State
13 and can no longer exercise any civil or political rights
14 under the laws of the State. They can't vote, they
15 can't have the benefit of the common schools of the State
16 for their children, they are exempt from all state and
17 county taxes, they are not entitled to receive State
18 support for the relief of the poor, they are not affected
19 on the reservation by State liquor laws. The law
20 concerning delivery of products within the State has
21 no application to deliveries within a Federal enclave,

1 and so on."

2 Then the minority opinion in the same case
3 brought forth the fact that the consequence of this case
4 was simply inconceivable. We have all pitied a man
5 without a country, but a man without a State is in a
6 horrible situation. Not only can he have those rights
7 mentioned in the majority opinion, but in the minority
8 opinion they pointed out that an infant on an enclave
9 could not have a guardian, no adoption would be possible
10 for the child or for adoptive parents on an enclave,
11 they are not subject to lunacy proceedings, their wills
12 may not be probated or letters issued.

13 Wrongful death acts are not applicable to
14 them, workmen's compensation is not applicable. Ownership
15 of their personal property left at death can't legally
16 be transmitted to their legatees or next of kin or to
17 anyone at all, and so on through the list of personal
18 privileges, rights and obligations, the remedies for
19 which are provided for the residents of a state.

20 All of these things, and such things as,
21 for example, death and birth and marriage certificates

1 are now supposed to be signed, that is birth and death
2 certificates are supposed to be signed by physicians
3 in order to practice in Maryland.

4 At the Naval Academy hospital there are
5 births and deaths at frequent intervals. The Navy
6 doctors sign these certificates. Our Health Department
7 has been good enough to issue Maryland birth and death
8 certificates for them, but it really isn't in accordance
9 with the law.

10 On marriage certificates, we have been sentimental
11 enough to allow midshipmen to go into the court house in
12 Anne Arundel County, get a marriage certificate which
13 can only be used in Anne Arundel County, then cross
14 the line over into the Federal enclave, because they
15 are sentimental enough to want to be married in the
16 Naval Academy chapel.

17 We have let them do that, and we have let
18 them bring the marriage certificate back and record it
19 as a valid Maryland marriage, but some day someone is
20 liable to question some of these things which we have
21 been allowing to happen as an accommodation and because

1 we are sentimentalists and want everyone to have the
2 right to get married where he wants to if it is any place
3 close to Maryland.

4 THE CHAIRMAN: Delegate Storm, the Chair has
5 just seen a copy of the amendment to which you referred.
6 If it is your purpose to offer that amendment, I think
7 it would be worth while to have it distributed now. It
8 may end some further questions.

9 DELEGATE STORM: I would appreciate that,
10 Mr. Chairman.

11 THE CHAIRMAN: Will the Pages please
12 distribute Amendment C, "C" for Charlie?

13 Delegate Singer.

14 DELEGATE SINGER: I would like to ask Delegate
15 Storm a further question along those lines.

16 THE CHAIRMAN: Delegate Storm, will you
17 respond to a question?

18 DELEGATE STORM: Yes.

19 DELEGATE SINGER: Was the case you cited the
20 Supreme Court case Delegate Boyer referred to?

21 THE CHAIRMAN: Delegate Storm.

1 DELEGATE STORM: No, that was a Maryland
2 Court of Appeals case.

3 THE CHAIRMAN: Delegate Singer.

4 DELEGATE SINGER: Are not some of the rights
5 mentioned in that case presently given to people who live
6 on Federal enclaves?

7 THE CHAIRMAN: Delegate Storm.

8 DELEGATE STORM: Yes, by act of Congress they
9 have re-ceded to the State of Maryland a number of
10 particular rights.

11 For example, the Buck Act gave back to the
12 State of Maryland the right to levy State and local
13 sales taxes and income taxes and the tax on motor fuels.
14 The Federal Government also ceded back the right for
15 workmen's compensation benefits to be collected by
16 people injured in work on Federal enclaves. They also
17 ceded back the right for unemployment compensation
18 which previously, without that ceding back, would have
19 been denied.

20 They have also adopted what they call an
21 assimilated crimes act which adopts Maryland criminal

1 law as Federal criminal law, as I understand it, in these
2 Federal enclaves.

3 To show you some of the complications that
4 we will be guarding against in the future, there was
5 a time when if a man murdered someone on a Federal enclave,
6 he went scott free, because the local States Attorney
7 could not prosecute, since it happened on Federal
8 territory, and the Federal attorneys could not prosecute
9 because there were no Federal laws against murder.

10 The Congress used to adopt at regular
11 intervals an act or series of acts adopting local
12 state criminal law, but it had been held and it was
13 thought to be the law that when the Congress adopted
14 the local law, if the local law were changed by the
15 Legislature it would take another act of Congress to
16 change that local law to make it Federal law.

17 They finally, however, got an assimilated
18 crimes act, which has been upheld by the Supreme Court
19 of the United States as being proper, and that makes
20 state law Federal law on those enclaves.

21 THE CHAIRMAN: Are there any other questions?

1 If not, the Committee Chairman may return to his seat.

2 Delegate Storm, do you now desire to offer
3 your Amendment C?

4 DELEGATE STORM: If you please, Mr. Chairman.

5 THE CHAIRMAN: Amendment C will be Amendment
6 No. 1.

7 The Clerk will read the amendment.

8 MR. QUILLEN: Amendment No. 1 to Committee
9 Recommendation GP-5 by Delegates Storm and Jett.

10 On page 1 strike out all of lines 5 through
11 15, inclusive, and insert in lieu thereof the following:

12 "Notwithstanding anything contained or omitted
13 in any act or acts of the General Assembly ceding juris-
14 diction over lands within this State to the United States
15 or in giving consent to the acquisition of any lands
16 within this State by the United States or any agency
17 thereof, whether by purchase, lease, condemnation or
18 otherwise, the jurisdiction of the laws of this State
19 over persons, property, transactions, acts or omissions
20 of individuals or private corporations within the limits
21 of or on such lands shall not cease or terminate, except

1 to such extent as may be specifically required by an act
2 of Congress. Nothing in this section shall be deemed or
3 construed to restrict the jurisdiction and authority of this
4 State over any lands, and the persons, property and
5 transactions thereon, heretofore acquired by the United
6 States. Any laws of the State continuing in effect within
7 the limits of or on such lands shall not be effective if
8 inconsistent with the governmental uses, purposes and
9 functions for which the land was acquired or is used by the
10 United States."

11 THE CHAIRMAN: The amendment having been
12 submitted by Delegate Storm and seconded by Delegate
13 Jett, the Chair recognizes Delegate Storm.

14 DELEGATE STORM: Mr. Chairman, I would like
15 to mention that although we were perfectly satisfied
16 with the original language, it was a little bit confusing,
17 and I was fortunate enough to get in touch with an
18 attorney in the Department of Justice who had chaired
19 a meeting of some 23 Federal agencies interested in this
20 proposal.

21 He said in the letter to me, which I will

1 file with the Committee records, uncertainty as to the
2 meaning of the code provision had been responsible for
3 the enactment of several Maryland statutes providing
4 for cession of jurisdiction as to specific Federal
5 properties.

6 He went over this amendment and made one change
7 which is reflected in it, and he says, "Now, as I construe
8 it, this would provide for a grant of at most concurrent
9 jurisdiction by the Legislature of the State by special
10 statute or general statute except where the Congress
11 otherwise required by a statute which would be passed.
12 I concur with you that this approach would accomplish
13 the purpose of retaining the normal relations of the
14 State with residents of lands Federally-acquired in the
15 future while permitting Federal agencies freely to
16 acquire jurisdiction under appropriate State statute
17 adequate for most, if not all, Federal operations and
18 enabling the Congress to specifically request greater
19 amounts of jurisdiction."

20 I might say that this would, I think,
21 answer Delegate Sherbow's question. The Federal

1 Government no longer wants exclusive jurisdiction.
2 They very seldom exercise exclusive jurisdiction. That
3 was the argument, you know, on that vote section
4 where I wanted to eliminate the word "exercise".

5 He says they have practically never exercised
6 jurisdiction exclusively. They consider it a nuisance.
7 They realize that it is upsetting to personnel, people
8 that live on these enclaves.

9 You see, when this started it was just maybe
10 a lighthouse keeper involved, but then as the Federal
11 Government grew and as people began living on these
12 enclaves, they still stuck to the same age-old
13 practice of asking for exclusive jurisdiction and the
14 State giving them exclusive jurisdiction which they never
15 exercised.

16 Now I think both sides understand that people
17 should be in a State, even though the Federal Government
18 may want exclusive jurisdiction in some instances
19 where there is some very high secrecy or something
20 required.

21 Under the amendment and under the original,

1 this would be possible, so I believe that the amendment
2 is maybe a little more readable, and it accomplishes
3 putting these people in a situation where they will have
4 a State government, and yet give the Federal Government
5 whatever jurisdiction they need.

6 This will be, I think, a very forward step,
7 and one which Maryland, because of its tradition, should
8 take.

9 THE CHAIRMAN: Are there any questions of
10 the sponsor of the Amendment?

11 Delegate Scanlan?

12 DELEGATE SCANLAN: Delegate Storm, I take
13 it that in the letter from the unnamed attorney from
14 the Department of Justice and in your conversations with
15 him, he did not state or suggest that this accommodating
16 language that he has approved and amended couldn't be
17 contained as well in the statute as in the Constitution?

18 THE CHAIRMAN: Delegate Storm.

19 DELEGATE STORM: He did not suggest this,
20 but please, Delegate Scanlan, don't "Scanlanize" this
21 because, for example, there was an attempt made by

1 the Legislature a few years ago to provide for rights by
2 an act of the Legislature.

3 The Attorney General ruled, and I think he was
4 right, that this was unconstitutional, it was impossible
5 for the Legislature to pass a law which they wanted to
6 pass giving people the right to vote.

7 There had been other decisions of the Court
8 of Appeals which make it clear that the only way we
9 can accomplish this is by the Constitution. A statute
10 will not do it.

11 If there is any doubt about this, please let me
12 know, because this should be unanimous, and if I am not
13 explaining it right I want to have a chance to explain
14 it right.

15 THE CHAIRMAN: Delegate Sherbow, would you
16 wait a moment? I think maybe the Committee of the Whole
17 lost the flavor of the new addition to the English
18 language coined by Delegate Storm because of his poor
19 voice today. He urted that he not be "Scanlanized".

20 Delegate Scanlan.

21 DELEGATE SCANLAN: Or be taken by Storm.

1 THE CHAIRMAN: Delegate Sherbow.

2 DELEGATE SHERBOW: Delegate Storm, I am
3 tempted to ask you who is on third?

4 You suggest, and normally I would be very
5 happy to say let's pass it unanimously, but I do have
6 a very, very serious doubt in my mind created by the
7 discussions, and I will lead up to a question.

8 We have had in this Convention paper after
9 paper accompanying various proposals and accompanying
10 recommendations. They are legal dissertations in some
11 instances giving us the law and the background and they
12 become a part of the record of this Convention.

13 Is not this a matter of such importance
14 that there should be research by the Staff Director
15 of this Committee and such a research paper attached
16 to this memorandum, and then after it has been distributed
17 to the Convention it be made a special order of business,
18 so that having examined the legal authorities we can
19 join you in perhaps either correcting it or voting
20 unanimously for it.

21 THE CHAIRMAN:

1 DELEGATE STORM: If you wish that done and
2 if the staff assistant has the time and energy to do it,
3 I would certainly agree to it.

4 However, I think and hope that I could answer
5 any further questions that you have.

6 THE CHAIRMAN: Delegate Bennett.

7 DELEGATE BENNETT: Delegate Storm, this seems
8 to require that under certain circumstances a special
9 act of Congress would be required to exempt the uses
10 of the property from state legislation, isn't that true?

11 THE CHAIRMAN: Delegate Storm.

12 DELEGATE STORM: If I might answer you a little
13 more completely than the first part of your question
14 suggests, in the original draft of the amendment, the words
15 were "until Congress shall by law provide for the
16 government thereof under the jurisdiction and manner
17 provided in Section 8, Article I of the Constitution
18 of the United States."

19 The gentleman from the Department of Justice
20 asked that we strike that and put in "except to such
21 extent as may specifically be required by an act of

1 Congress", and this, he says, will include acts of
2 Congress which authorize Federal agencies to ask for
3 a particular type of jurisdiction, so he thought that
4 this should be in our provision in order to give the
5 Federal Government free hand without going back to Congress
6 all the time, because under some acts of Congress some
7 Federal agencies are authorized to redress -- for example,
8 in a case of a prison, a certain type of jurisdiction.
9 This was his suggestion as to how this amendment could
10 be made perfectly acceptable to the Federal Government.

11 THE CHAIRMAN: Delegate Bennett.

12 DELEGATE BENNETT: What I am trying to do is
13 to point up Delegate Sherbow's question a little more.

14 If there is a very large secret plant, like
15 an atomic energy plant, being proposed for the State
16 of Maryland and the State of Virginia is also a competitor
17 for that atomic energy plant, then this requirement of
18 action by Congress might block the whole thing, because
19 the Senators from Virginia might be more powerful than
20 the Senators from Maryland.

21 THE CHAIRMAN: Delegate Storm.

1 DELEGATE STORM: If I might respond to
2 that, this could not be the case as far as this being
3 a disadvantage.

4 Now, whether or not the Senators from Virginia
5 are more powerful, I can't answer that, but this language,
6 except to such extent as may specifically be required
7 by an act of Congress, was inserted exactly for the
8 reason that if the Federal Government wanted any parti-
9 cular type of jurisdiction rather than concurrent juris-
10 diction, they could get it even without an act of Congress
11 if the previous act of Congress had authorized one of
12 the Federal agencies to ask for particular jurisdiction.

13 Do you follow what I am trying to say?

14 THE CHAIRMAN: Delegate Bennett.

15 DELEGATE BENNETT: Yes, I think I follow you,
16 but nevertheless I think it might establish a road block,
17 a particular law of Maryland requiring a particular
18 Congressional act might operate as a road block to
19 prevent the location of that institution in Maryland.

20 THE CHAIRMAN: Delegate Storm.

21 DELEGATE STORM: If I might respond to that,

1 this language was inserted to guard against any possibility
2 like that, and this language was suggested by the gentle-
3 man from the Department of Justice who had chaired 23
4 separate Federal agencies.

5 You see, unfortunately, they don't have an
6 Attorney General over there who can give one binding
7 opinion for all of the Federal Agencies, but when you get
8 23 of them, including the Department of Defense, the
9 Department of Justice, Atomic Energy, and 20 others and
10 they all agree, then I think we are in pretty good shape.

11 THE CHAIRMAN: Delegate Storm's time for
12 questions has expired.

13 Is there any further discussion with respect
14 to Amendment No. 21?

15 Delegate Scanlan.

16 DELEGATE SCANLAN: I would like to oppose
17 the amendment.

18 THE CHAIRMAN: You may speak.

19 DELEGATE SCANLAN: The amendment in its
20 expanded form and the original proposal in its shorter
21 form I think are entirely unnecessary. As the majority

1 admits, the recommended provision is basically the same
2 as the statutory provision -- at least the original
3 proposal -- as is now found in the Code.

4 There is no question about the power of the
5 Maryland General Assembly to deal with this subject,
6 to insert in the Code language which is identical with
7 Amendment No. 1, if it so desires, but to freeze it into
8 the Constitution I think first is unnecessary and,
9 second, it presents the problem that Judge Sherbow called
10 attention to.

11 There may be a time when the United States,
12 for instance, would want to put the Patent Office
13 or another larger Federal facility in Maryland, and it is
14 entirely possible that the restriction set forth in
15 Amendment No. 1 might tie the hands of the Maryland
16 Legislature and the Maryland authorities in negotiating
17 the type of cession to be agreed upon.

18 Even the language of Amendment No. 1 I don't
19 think furnishes the protection that might be ideal in
20 some cases. The last clause of it says "any laws
21 of this state continuing in effect within the limits

1 of or on such lands shall not be effective if inconsistent
2 with the governmental uses, purposes and functions for
3 which the land was acquired or is used by the United
4 States", so even under that language, under the last
5 analysis, the question comes down to one of negotiation.

6 If the United States and the Department of
7 Justice, or whatever agency was representing the United
8 States, insisted that certain laws should not be appli-
9 cable in the ceded territory and Maryland really wanted
10 the United States to bring the facilities to Maryland,
11 undoubtedly it would recede from its position, so
12 really the statutory language does not furnish the
13 protection that perhaps some might think desirable.

14 I, for one, don't think it desirable. I,
15 for one, would let this matter stay with the representatives
16 of the people to be dealt with on a case-by-case basis
17 under general language which would prohibit them from
18 surrendering jurisdiction to the maximum extent possible --
19 that is, retain jurisdiction to the maximum extent
20 possible. No other state apparently has such a provision.

21 I am quite confident that the United States

1 and all its agencies couldn't care less whether this was
2 a provision of our statute or a provision of our
3 Constitution, whatever the general feeling may be about it.

4 Again, I ask you to keep out of the Constitution
5 matters that have no place there and matters which can
6 be handled by the General Assembly and matters for which
7 no abuse on the part of the General Assembly, at least
8 in the last 30 or 40 years, has been demonstrated by
9 any evidence before this body.

10 THE CHAIRMAN: Delegate Jett.

11 DELEGATE JETT: Mr. Chairman and fellow
12 Delegates, I don't want to take the Convention by "Storm"
13 or "Scanlanize" it, but hope to give it possibly a
14 little "Jett" propulsion.

15 What I would like to call the attention of
16 the Convention to is that I happened to sit in on
17 the General Provisions Committee and was very much
18 interested in Delegate Storm's presentation, and did some
19 very surface-scratching examination of the authorities.

20 I think the big point that is lost sight of
21 here is that by this amendment we are suggesting to the

1 States that you don't cede any more land to the Federal
2 Government. I think it has been lost sight of that the
3 Federal Government in the State of Maryland holds 187,000
4 acres. This represents three per cent of the State.
5 We have given them the District of Columbia -- we were
6 the earliest State to ever act on this subject.

7 Our thought is we should say to the Legislature
8 we don't want any more of Maryland given to the Federal
9 Government. This is our Maryland, and we want it kept,
10 and to the full extent you can keep it we want it retained.

11 We did recognize Delegate Sherbow's problem.
12 We did recognize there might come a time when there might
13 be a very important Federal installation coming to
14 Maryland, and we didn't want the hands of the Legislature
15 tied so they couldn't deal with that agency. That is
16 the purpose and the intent of the amendment which Delegate
17 Storm and I have introduced so that the Legislature
18 is told we don't want any further cessions in the State.

19 In this case our Chairman spoke of, it came down
20 to a very important matter of dollars and cents.
21 Louisiana had conveyed away a very important piece of

1 property and had not retained the right to tax, and had
2 tried to put on an ad valorem tax.

3 The Supreme Court, in 376 U.S., in the
4 Waggoner case, specifically held that if the State had
5 retained that right it could have taxed the property on
6 this ceded property.

7 That is the point of this, and that is the
8 only point, that Maryland retains all of its land that
9 it possibly can, with as much control over it as it is
10 possible to retain, and I hope you will vote for the
11 amendment.

12 THE CHAIRMAN: Does any other Delegate desire
13 to speak in opposition?

14 Delegate Sherbow?

15 DELEGATE SHERBOW: Would Delegate Jett
16 yield for a question?

17 In a matter that seeks to do good but which
18 might possibly do harm and is of such tremendous
19 importance, can you give us one good reason why we should
20 not have a competently drafted legal written memorandum
21 made a part of these proceedings before we act on anything

1 as important as this? .

2 THE CHAIRMAN: Delegate Jett.

3 DELEGATE JETT: I am not urging that we
4 act immediately on this, but I want you to know that
5 this isn't something just rushed into as a good idea
6 without giving it some thought.

7 THE CHAIRMAN: Delegate Boyer.

8 DELEGATE BOYER: Mr. Chairman, in view of the
9 very pointed questions raised by various Delegates, I
10 would respectfully move that this matter lay over until
11 our research staff can come up with a legal memorandum
12 on this so that we can consider it more in depth and
13 decide at that time one way or another which route
14 to take.

15 I would so move, Mr. Chairman.

16 THE CHAIRMAN: Delegate Boyer, I don't believe
17 the motion you just put is in order in that form, because
18 the Committee of the Whole is acting under instructions
19 of the Convention. I believe the same purpose can
20 be accomplished if we cease the discussion of GP-5 at
21 this time and pass on to the next item. Then when the

1 Committee rises it can request the Convention not to put
2 it on the agenda until a later date.

3 Would that be satisfactory?

4 DELEGATE BOYER: Completely, Mr. Chairman.

5 I would like to point out it was
6 certainly not the intention to scuttle or do away
7 with this, but merely give everybody an equal opportunity
8 to consider it with all the many ramifications that might
9 be involved.

10 THE CHAIRMAN: Very well.

11 Is there any objection to the Committee
12 of the Whole ceasing further consideration of GP-5 at this
13 time?

14 Delegate Jett?

15 DELEGATE JETT: No objection, sir, on my part.

16 In order to agree with that, I was just
17 wondering whether it would be helpful if we withdraw
18 our amendment at this time, also?

19 THE CHAIRMAN: No, I think the matter can
20 just stay in the present status and we just move on to
21 another item.

1 The Chair would like to suggest to Delegate
2 Boyer, however, that since it is our objective to complete
3 consideration before we adjourn on Thursday of this week
4 of all matters before the Committee of the Whole, I would
5 hope that this could be back on the agenda for Thursday.

6 If you would speak to Mr. Brooks, I am sure
7 he would assign somebody to do the necessary research
8 very quickly.

9 There being no objection, we will now cease
10 consideration at this time of the Committee Recommendation
11 GP-5 and will take it up at such later time as it is
12 among the general orders.

13 The next item is the consideration of
14 Committee Recommendation GP-7.

15 The Chair recognizes Delegate Boyer, Chairman
16 of the Committee.

17 Delegate Boyer.

18 DELEGATE BOYER: Mr. Chairman, the General
19 Provisions Committee is attempting, in order to expedite
20 and save some time on this matter, attempting a novel
21 approach to the remaining sections before us -- that would

1 be GP-7, 8, 9, 10 and 11.

2 We feel that there would probably be some
3 questions, we hope of a minor nature, but mere explanation,
4 and to save the time of the Convention instead of asking
5 them or repeating them on the floor the Committee has had
6 volunteers from various members to act as sort of
7 specialists in these areas, and I would appreciate it
8 if the Delegates would make a note of this.

9 If there are any questions, for instance, that
10 you may want to ask by way of explanation only, if you
11 would see on GP-7 Delegate Edward Clarke, on GP-8 Delegate
12 Gerard Caldwell, on GP-9 Delegate Arthur Kirkland, on
13 GP-10 Delegate Sosnowski, and on GP-11 Delegate Marvin
14 Singer.

15 These gentlemen have agreed to act as experts
16 in these fields and will be glad to answer your questions
17 and perhaps save the time of the Convention.

18 The next item before us, Mr. Chairman, would
19 be GP-7 dealing with the amendments to the Constitution.

20 Amendments to Constitutions are generally
21 initiated by three methods -- one, by legislative action;
two, through State Convention; or, three, through normal

1 initiative petitions.

2 Most States allow the use of either of the
3 two methods. Thirteen states, however, permit
4 amendments by the initiative directly by the people.

5 Your Committee considered all these matters
6 and adopted the identical conditions contained in the
7 draft, and that would allow the amendment to the
8 Constitution by two methods -- one, through the Legislature
9 by a three-fifths vote of the membership or, two, through
10 a Constitutional Convention called by the Legislature.

11 We were satisfied that the initiation of the
12 proposed amendments through legislative action in
13 conjunction with the modern form of State Constitution
14 was a sufficient safeguard to the rights of the people,
15 particularly since they would have the opportunity to
16 vote on the adoption or rejection of the amendments
17 if and when proposed to them.

18 We have adopted the Commission draft, and
19 we have recommended this in our proposal GP-7.

20 THE CHAIRMAN: Are there any questions of
21 the Committee Chairman?

1 The Chair hears none.

2 Delegate Boyer, I have a notation indicating
3 that you were going to correct a typographical error
4 in this proposal to the numbers.

5 DELEGATE BOYER: That is right, Mr. Chairman,
6 thank you.

7 On GP-7, the Recommendation as you have it on
8 your blue sheet covers Delegate Proposals 11, 290 and
9 321. We would appreciate it very much if you would
10 delete or scrub out 290. That was put in in error. This
11 Proposal GP-7 has no connection with 290.

12 THE CHAIRMAN: Delegate Byrnes, are you
13 still the chief sponsor for Amendment A?

14 DELEGATE BYRNES: No, Mr. Chairman. Dr.
15 Winslow is.

16 THE CHAIRMAN: Delegate Winslow, do you
17 desire to offer Amendment A?

18 DELEGATE WINSLOW: Yes, I do, sir.

19 THE CHAIRMAN: Will the Pages please distribute
20 Amendment A -- "A" for Able?

21 The Clerk will read the amendment. This will

1 be Amendment No. 1. .

2 MR. QUILLEN: Amendment No. 1 to Committee
3 Recommendation No. GP-7 by Delegates Winslow, Borom,
4 Boyce, Bryson, Byrnes, Clark, Fox, Freedlander, Gallagher,
5 Grant, Hanson, Hopkins, Jett, Needle, F. C. Robey,
6 K. K. Robie, Schloeder, Ulrich and Wagandt.

7 On page 1 in line 6 strike out the word
8 "either";
9 and in line 8 strike out the word "or" and insert in lieu
10 thereof a comma;
11 and in line 11 strike out the period and strike out the
12 remainder of this line and all of lines 12 through 15,
13 inclusive, and insert in lieu thereof the following:

14 ", or by a petition filed with the office
15 of the governor signed by a number of qualified voters
16 of the State equal to ten percent of the total number
17 of votes cast for governor in the most recent guber-
18 natorial election, provided that not more than one-
19 fourth of such number shall be voters in any one county.
20 Any such petition shall be in such form, and shall be
21 signed and circulated in such manner as shall

1 be prescribed by law.. When proposed by the General
2 Assembly or by the petition of the voters, the proposed
3 amendment shall be submitted to the voters of the State
4 at a special or general election as determined by the
5 General Assembly and when proposed by a constitutional
6 convention shall be submitted to these voters at a special
7 or general election determined by the convention."

8 THE CHAIRMAN: Delegate Winslow, the Chair
9 would like to inquire if there is a typographical error
10 by the omission of the word "as" in line 30 after
11 "election" and before "determined"?

12 DELEGATE WINSLOW: Yes, I think there is,
13 sir.

14 THE CHAIRMAN: Do you wish to make the
15 correction?

16 DELEGATE WINSLOW: Yes, if you please --
17 insert "as" between "election" and "determined".

18 THE CHAIRMAN: Is there any objection to
19 modifying the amendment by inserting after the word
20 "election" in line 30 the word "as"?

21 (There was no response.)

1 THE CHAIRMAN: The Chair hears none.

2 The amendment having been submitted by
3 Delegate Winslow and others and duly seconded, the Chair
4 recognizes Delegate Winslow.

5 DELEGATE WINSLOW: Mr. Chairman, may I first
6 ask unanimous consent to make two additional word changes,
7 one in line 14, to strike the word "qualified" and
8 insert the word "registered". This will bring it in
9 conformity with the provisions elsewhere in the
10 Constitution when inserted in petitions.

11 THE CHAIRMAN: Wasn't the word "qualified"
12 used in the Committee Recommendation of the Committee
13 on Suffrage and Elections?

14 DELEGATE WINSLOW: My copy shows that it was
15 changed to "registered". Perhaps I am wrong.

16 THE CHAIRMAN: Let me check it, please.
17 What is your other suggestion?

18 DELEGATE WINSLOW: In line 18, a clarifying
19 change -- instead of the word "such", put in the two
20 words "the total" so that it reads "one-fourth of
21 the total number shall be".

1 THE CHAIRMAN: Is there any objection to
2 modifying the amendment by striking the word "such" in
3 line 18 and inserting in lieu thereof the words "the
4 total"?

5 (There was no response.)

6 THE CHAIRMAN: The Chair hears none. The
7 modification will be made.

8 DELEGATE WINSLOW: Thank you.

9 THE CHAIRMAN: If you will proceed, I will
10 check the other and come back to it.

11 DELEGATE WINSLOW: Thank you, Mr. Chairman.

12 Ladies and gentlemen of the Committee, may I
13 begin with an apology to all of those Delegates whose
14 names do not appear at the head of this proposed amendment.
15 This amendment was printed at an earlier stage when
16 it was supposed we would be debating this matter ten days
17 or so ago, and those who have expressed agreement with it
18 since that date do not have their names appearing here.

19 May I point out, secondly, that in the list
20 of names on the amendment is that of Delegate James Clark.
21 I point this out especially because I was depending upon

1 Delegate Clark to present argument for this, and the only
2 thing that I can think to do is ask the Chairman to stop
3 the debate for three minutes at some proper time and let us
4 listen to Delegate Clark by whatever device we have the
5 possibility of reaching him at the hospital.

6 A very brief word of explanation of the amendment.
7 As Delegate Boyer suggested, there are three normal ways
8 of proposing constitutional amendments, two of them
9 which are to be found in the Committee report, and the third
10 one which is being here submitted.

11 This is a third method of proposing amendments
12 to those in the Committee report -- three-fifths of both
13 Houses or by constitutional convention when held.

14 This amendment adds a third one to propose
15 an amendment by popular action, by a petition which shall
16 require ten per cent of the voters at the last gubernatorial
17 convention and demand a geographic spread so that not more
18 than one-fourth of those signers may come from any one
19 county, leaving it to the General Assembly to fix the
20 details of petition and procedure.

21 This is the kind of constitutional initiative

1 which is to be found in one form or another in 13 states.
2 I am sorry to say that I can't give you the list of them,
3 because I loaned my material to one of the research
4 staff a few days ago. It has not been returned, and I don't
5 know which one it was or where to find him.

6 Mr. E. J. Clarke has a list, so if we need a list
7 we can get at it. They do include Michigan, Ohio, Oklahoma,
8 North Dakota. There are 13 of them.

9 Now, the purpose of this amendment, the purpose
10 of the initiative for constitutional amendments is that
11 in extreme cases a change is possible, but notice that it is
12 only in extreme cases, for the provision requires that there
13 be ten per cent of the qualified voters.

14 When we were debating a general referendum
15 procedure earlier it was suggested that a five per cent
16 referendum across the State would make it almost impossible
17 to get a law referred to the people.

18 You will note I am making it twice as difficult
19 with ten percent. There is a total of a possible 92,000
20 signers through the 1966 gubernatorial election.

21 Note also the amendment requires, with respect

1 to a geographic spread, that not more than one-fourth
2 of the signers may come from any one county. This is
3 also twice as difficult for we have provided that not
4 more than half should come from one county.

5 I suggest that under this provision, neither
6 the ultra-liberal people in Baltimore County nor the ultra-
7 conservative people in Montgomery, or both of them combined,
8 could possibly produce enough signers.

9 These two congenial groups would, of necessity,
10 get at least two more counties to go along with them before
11 they could produce an amendment.

12 Now, the reason for this is stated rather
13 succinctly in an article which appeared in a metropolitan
14 newspaper not too far away on Sunday morning last which
15 reads:

16 "The difficulty of this method is intentional.
17 It is not desired by the sponsor that frequent amendments
18 should arise by petition. On the contrary, it is their
19 intent that amendment by the petition method should be most
20 infrequent, and occasioned only by the seeming impossibility
21 of getting the wanted change by either of the other two

1 methods. This would be the shotgun behind the door.
2 Beside the petition, the geographical spread required would
3 avoid the danger of its promiscuous use, but had such a
4 provision be in the 1867 constitution it would not have been
5 necessary to wait 40 years for legislative reapportionment."

6 I might add, further, that had this kind of
7 constitutional procedure been in the 1867 constitution
8 we would not have had to wait until 1967 to get a convention,
9 for once the Attorney General's opinion had been expressed
10 in 1930, it would have been possible for the people of
11 the state to initiate a petition and get a convention
12 at a much earlier date.

13 While it is true that only Judge Sherbow and I
14 would have been members of that convention from among the
15 present Delegates, even so we would have had a convention
16 some 30 years sooner.

17 In other areas of the country this kind of
18 constitutional initiative has proved particularly
19 successful in some places. I am not unaware that there
20 are situations in which it has not done so well, and
21 I will tell you where it is. It has not done very well

1 in California. There are a lot of things that don't
2 do very well in California, and one reason that this didn't
3 work in California was that the petition required was a very
4 low petition, and they got in the habit in California of
5 signing petitions and they haven't been able to get out of it.

6 The average size of the petition across the
7 country in this respect is ten per cent, exactly where
8 I have placed it here.

9 Michigan was able a few years ago to get their
10 constitutional convention going only because they had this
11 in their constitution, and the current issue of the
12 Journal of the American Judicatory Society tells what is
13 happening in Oklahoma. There is a movement for judicial
14 reform in Oklahoma very much like the one that we have
15 just endorsed, and the reason that it is being put on the
16 ballot in Oklahoma this year is that there was a petition
17 of this sort being circulated, and the General Assembly
18 of Oklahoma or the State Legislature of Oklahoma decided
19 that they would get their own version of it on the ballot
20 first, so that is the way it got on there. This is another
21 case of the shotgun.

1 I don't think that anyone here is wise enough
2 to predict what particular piece of the Constitution may
3 arouse in the people of Maryland a desire to do this thing,
4 but I suggest that such items will arise, and it seems
5 to me the part of wisdom on the part of this convention
6 to make provision for it.

7 I am not asking, as an earlier Delegate did,
8 that you give this amendment a unanimous vote. I would
9 be very happy with 100 affirmative votes.

10 THE CHAIRMAN: Before asking for questions
11 of the sponsor of the amendment, Delegate Winslow, in the
12 second section of Committee Recommendation S&E-1, "dealing
13 with the referendum", the reference is to registered voters.
14 In the first section of Committee Recommendation S&E-2
15 dealing with eligible voters, there is in effect a definition
16 of qualified voters, and I believe that in the other articles
17 dealing with the Executive Branch and Legislative Branch
18 we have referred consistently to qualified voters.

19 Would it satisfy you to leave to the Committee
20 on Style the question of whether the first word in line 14
21 should under all circumstances be qualified or registered?

1 DELEGATE WINSLOW: I should be very happy to
2 leave it to Style.

3 THE CHAIRMAN: Will the Chairman of the Committee
4 on Style then please make a note of that? The first word
5 in line 14 of Amendment 1 is "qualified". The question
6 is should it remain "qualified" or be "registered".

7 Are there any questions of the sponsor of the
8 amendment?

9 Delegate Mason, Delegate Winslow has only one
10 minute, so will you state your question promptly?

11 DELEGATE MASON: Delegate Winslow, you stated
12 in California experience hasn't been too good with this
13 type of initiative.

14 What percentage of the voters are permitted on
15 the petition in that state?

16 THE CHAIRMAN: Delegate Winslow.

17 DELEGATE WINSLOW: Eight per cent with no
18 geographic spread.

19 THE CHAIRMAN: Are there any other questions?
20 Delegate Boyer.

21 DELEGATE BOYER: Mr. Chairman, I hope my question

1 will not necessarily be construed in opposition, but I have
2 discovered a slight inconsistency that disturbs me,
3 and I thought since these records will be historical,
4 and perhaps for posterity, Delegate Winslow would like to
5 explain something to me here.

6 Reading from the 17th Report of the Commission
7 Committee on Miscellaneous Provisions, November 21, 1966,
8 I note that Dr. Winslow was invited to attend one of the
9 Committee meetings to give his views on this particular
10 subject.

11 The present language that General Provisions
12 has adopted out of the Commission draft is in a large measure
13 a result of his suggestions.

14 I wonder if you would clarify your stand or
15 your position today?

16 THE CHAIRMAN: Delegate Winslow.

17 DELEGATE WINSLOW: Delegate Boyer, my position
18 today is exactly as it was when I appeared before the
19 Commission. I don't know that I have changed any,
20 except perhaps that I have become a little more harsh,
21 for I think I did not at that time suggest that not more

1 than one-fourth of the petition should come from any one
2 county.

3 I am very serious about this one-fourth. I don't
4 want amendments to pop up all over the place. I want this
5 to be used only in very extreme cases where other ways of
6 getting amendments seem to be impossible.

7 THE CHAIRMAN: Delegate Boyer, do you desire to
8 speak either in favor or in opposition to the amendment?

9 DELEGATE BOYER: Mr. Chairman, I have no strong
10 feeling on this one way or another. I would like to report
11 what the Committee, however, had adopted. We had considered
12 the matter of inclusion of initiative, and there were eight
13 reasons why we did not adopt it.

14 Number one, we felt that the mandatory provision
15 for calling a convention every 25 years, if desired by the
16 people, was a safeguard. We felt that the electorate
17 should not necessarily control the Legislature.

18 We felt that there was a danger of the initiative
19 petition by special interest groups.

20 We felt that the shortened constitution leaves
21 detail to the Legislature, and therefore the amendment

Annual Report of the Board of Directors of the American Red Cross Society for the Year 1887

The American Red Cross Society was organized on May 21, 1881, for the purpose of promoting the relief of human suffering, especially among the armed and disarmed forces of all nations.

The Society has since that time been engaged in a variety of humanitarian work, and its efforts have been rewarded by the success of its various campaigns.

The following is a summary of the work of the Society during the year 1887:

The Society has received from the Government of the United States a grant of \$100,000 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$50,000 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$25,000 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$12,500 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$6,250 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$3,125 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$1,562 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$781 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$390 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$195 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$97 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$48 for the purpose of promoting the relief of human suffering.

The Society has also received from the Government of the United States a grant of \$24 for the purpose of promoting the relief of human suffering.

1 to change detail was not necessary.

2 We felt that a properly apportioned legislature
3 could be trusted to reflect the demands of the people.

4 We felt that unified control drafting a written
5 law should remain in the legislature. We felt that the
6 initiative of legislation was defeated by the convention.

7 We lastly felt that the right of the people to
8 pass on the proposed amendments was retained, and therefore
9 that the direct initiative by the people was not necessarily
10 an emergency measure.

11 For these reasons, for the arguments against the
12 inclusion of initiative, we declined to put it in our GP-7.

13 As I say, I have no strong position on it, either
14 necessarily for it or opposed to it, but I thought that to
15 help enlighten the Committee of the Whole I should bring
16 out these eight reasons why the Committee did consider it and
17 decided not to adopt it.

18 THE CHAIRMAN: Does any other Delegate desire
19 to speak in favor of the amendment?

20 Is there any other Delegate in opposition?

21 Delegate Scanlan.

1 DELEGATE SCANLAN: Mr. Chairman, fellow
2 Delegates, it always grieves me to take a position contrary
3 to my distinguished colleague from Baltimore County with
4 whom I have had the pleasure of service on the Constitutional
5 Convention Commission before which Commission he advanced
6 the idea now reflected in Amendment 2.

7 I always feel that the positions I should take
8 so I could agree with him were the positions I would take
9 many years ago in my political science courses in Columbia,
10 where I gave the answers that agree with the position taken
11 by Delegate Boyer today and my professors approved.

12 It is not always the conservatives who don't
13 always learn by the lesson of experience. I think sometimes
14 the liberals and idealists don't. The ideal of initiative
15 is a hangover from the great days of George L. Morris and
16 the liberalism of that day, but the experience of the years
17 has shown that the initiative can be subject to the gravest
18 abuse, and the most recent manifestation of that was in
19 California on the open housing referendum there.

20 Today only 13 states retain it, and even most of
21 them require that when enough signatures are gathered the



1 petition must be filed with the General Assembly or the
2 Legislature at its next session so the Legislature would
3 have an opportunity either to accept it and put it on the ballot
4 in regular form, or to reject it.

5 The proposal before you doesn't go that far.

6 Secondly, when legislatures were malapportioned,
7 when they truly didn't represent the people, when there was
8 no concept of one man-one vote in most of the states of
9 this nation, I think there was a certain validity for provid-
10 ing a means to break the log jam, but even there I don't
11 believe the initiative was used successfully in one single
12 state to break the log jam of malapportionment.

13 Malapportionment, at least in the General
14 Assemblies of the land, is behind us, and the people now
15 are represented by their representatives at the state
16 capital as we are in Maryland.

17 The amending procedures proposed by the Committee
18 are very liberal. First you have the three-fifths
19 traditional procedure, and secondly in their next
20 proposal you will have before you a proposition that a
21 constitutional convention can be convened at any time, or



1 put to the people at any time by a majority of the
2 General Assembly, so truly if the situation should arise
3 that great public issues are left unattended by the
4 General Assembly, a bare majority of that Assembly can
5 put it to a constitutional convention and the matter can
6 be rectified.

7 In short, whatever justification there once
8 was for the constitutional initiative has since passed into
9 history and is a memory with George Norris.

10 THE CHAIRMAN: Does any other Delegate desire
11 to speak in favor of the amendment?

12 Delegate Byrnes.

13 DELEGATE BYRNES: I would point out to Delegate
14 Scanlan and members of the Committee that we are living
15 testimony and witness to the fact that, despite the fact
16 we are now reapportioned, we do not leave the initiative for
17 constitutional amendment with the Legislature.

18 This very convention suggests at times the people must act.

19 I think the essence of Dr. Winslow's proposition
20 is that the people should retain the basic control over
21 their basic law. We reject the initiative of legislation,

1 and that may have been a wise rejection. We are now
2 talking about the basic organic structure of our government,
3 and I think it behooves us to recognize that the people
4 retain that control.

5 I think we are representing that very philosophy
6 here today, and we should continue it by accepting the
7 amendment suggested by Dr. Winslow.

8 THE CHAIRMAN: Delegate Pascal.

9 DELEGATE PASCAL: The same proponents I see for
10 this indirect consitutional initiative were almost the
11 same on the legislative initiative, and some of the reasons
12 we rejected it in Committee were these.

13 The law would not have the opportunity to come
14 before the General Assembly for debate, and the General
15 Assembly would be a total representation.

16 Dr. Winslow proposes it come from four counties
17 of 23,000 signatures apiece, and I suggest this is not
18 total representation which Provision would get in the General
19 Assembly.

20 Now, another reason for the Committee's rejection
21 of indirect initiative in our Committee was this, that

1 again a special interest group, well financed, could turn
2 the tide rather than the total representation of this
3 state, and I think there is a great fear here, and I think
4 this amendment should be rejected.

5 THE CHAIRMAN: Does any other Delegate desire
6 to speak in favor of the amendment?

7 Delegate Hanson.

8 DELEGATE HANSON: Mr. Chairman, I rarely find
9 myself in a position to disagree with my colleague from
10 Montgomery County, Mr. Scanlan. I share his lack of
11 enthusiasm for the legislative initiative. I was
12 opposed to the legislative initiative and I remain opposed
13 to the legislative initiative.

14 I do not think that as a practical matter it
15 has fulfilled the promises that were made for it when it
16 was developed. I am a sponsor of this amendment, and I
17 must say I am a sponsor of it with some degree of trepidation
18 because of my lack of enthusiasm for initiatives generally.

19 The reason I sponsor it, however, is for what I
20 believe is a very practical reason in the development of
21 constitutional government. It is quite true that a

1 representative and reapportioned legislature should be able
2 to handle the initiation of amendments to the Constitution.
3 I think that it will be able to handle them with one
4 important exception, one area of important exception,
5 and that is the area of reform of the Legislative Branch
6 itself.

7 I believe we in this convention have done much from
8 the point of view of our own judgment in this place and in
9 this time to reform the Legislature to improve its pro-
10 cedures and to make it an effective branch of the govern-
11 ment.

12 I think that all of us would confess, however,
13 that we may not have the last word in wisdom on what
14 the future structure of the Legislature should be. I
15 think the one thing that we can observe is that there is
16 probably no group of people in creation less likely
17 to reform themselves than the members of the Legislature
18 when the time for that reform has arrived, and it is for
19 this reason that it seems to me, and for this paramount
20 reason, that we should provide in the Constitution a
21 means external to the Legislature for the revision of that

1 part of the Constitution which pertains to the Legislature.

2 I recognize the problem that this may be used
3 for other areas. I am willing to take that risk. I am
4 willing to believe that the Legislature will respond in most
5 instances to the needs of the people for constitutional
6 change and constitutional reform, but I think that it is
7 useful as a practical matter to have, with adequate
8 safeguards -- and I believe the ten per cent registered
9 voters petition requirement is an adequate safeguard -- to
10 give the people their recourse from a Legislature which
11 can't be reelected but once every four years and which in
12 the meantime may be avoiding grave constitutional issues
13 for which redress is needed.

1 THE CHAIRMAN: Delegate Chabot.

2 DELEGATE CHABOT: Mr. Chairman, it is
3 apparent that the whole objective of this amendment is
4 to say there are times when we are going to have an
5 irresponsible legislature, have to find some way of
6 short circuiting the legislature in the amendment
7 process.

8 I suggest that this amendment then will not
9 accomplish the purpose at all because it gives to the
10 legislature the functions of making the vital definitions
11 and the process that would be used under this amendment.
12 The legislature apparently will be permitted to determine
13 over what period of time the signatures are to be
14 gathered. If you have an irresponsible legislature that
15 is not going to respond to the will of the people,
16 obviously they can make this time so short it cannot
17 possibly be used. If, on the other hand, you have a
18 legislature that is irresponsible in a way that seeks to
19 pass the buck to the people and remove its responsibilities,
20 then they can permit a year or any such extended period
21 of time for the gathering of signatures.

1 Consequently it is clear that the legislature
2 whose irresponsibility gives rise to this proposal can
3 either make the proposal be most useful in a manner that
4 its proponents don't want, as Dr. Winslow pointed out
5 in the California experience, or can so frustrate the
6 objective of its proponents that no amendment can ever
7 come to the people under this proposal before us.

8 I suggest that all of the reasons that were
9 given for determining that we should not have initiative
10 in the passage of ordinary laws where any errors can be
11 corrected by another session of the General Assembly,
12 or by a special session of the General Assembly, apply with
13 even greater force to constitutional amendments where we
14 will not have had the benefits of the deliberative process
15 at any of the stages of the game and where errors cannot
16 be easily corrected later on.

17 THE CHAIRMAN: Any other discussion? Ready
18 for the question? Delegate Schloeder.

19 DELEGATE SCHLOEDER: Mr. Chairman, I feel com-
20 pelled to rise for a number of reasons in support of this
21 amendment by a seat mate, Delegate Schneider, who is now

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1 on the other side of the room, he assured me he is going
2 to support me for what I think is the third time since
3 September 12. I rise with that kind of backing.

4 Also Delegate Scanlan, my other seat mate on
5 my right, has alluded to George Norris. I can't help
6 but remember the story they told comparing George Norris
7 to Senator Borah. They said Borah, unlike Norris,
8 fought his enemies until he saw the whites of their eyes.
9 Norris didn't begin his fight until he did see the whites
10 of their eyes.

11 Being that close to Delegate Scanlan, I have
12 to rise to oppose his position. I think three reasons
13 all have been made but I would like to remake them.

14 One, it gives people opportunity to participate
15 as a part of the government, as individuals, not through
16 a representative process. I think Dr. Winslow's argument
17 about legislative reapportionment having come to this
18 state forty years ago is a very compelling one.

19 I think there is another one. This may strike
20 closer to home. I think a great many things we are going
21 to write into this Constitution that are going to be

1 suspect as far as the general public is concerned. I
2 think that the public is going to be asked to take a
3 Constitution on balance. I am going to ask them to do
4 that. I think they should have through the constitutional
5 initiative process the right to change that part of the
6 Constitution that they may disagree with, to do it
7 directly and not through their representatives.

8 I think that the situation or the criteria
9 set up by Dr. Winslow make this very restrictive and I
10 don't see that this is very similar to the indirect
11 initiative that I was a co-sponsor on earlier in the
12 session.

13 For those reasons I would appreciate your
14 supporting this amendment.

15 THE CHAIRMAN: Delegate Cardin.

16 DELEGATE CARDIN: Mr. Chairman, I would like
17 to speak against this even though I am in favor of the
18 idea. The more I have studied it the more I realize
19 there are pit-falls.

20 First I would suggest that if this were so
21 great and so important a need the possibility of forty-six

1 or fifty thousand signatures delivered to the office of
2 the governor which would bring a matter to referendum
3 could also accomplish the same purpose because I believe
4 then a question could be brought to referendum if the
5 legislature passed something we did not like or affected
6 something in the Constitution.

7 Second, the possibility of 100,000 signatures
8 stating they were dissatisfied with the judicial system
9 as we devised it in this newly drafted Constitution
10 frightens me because in looking at the galleries day
11 after day since September 12, I am slightly concerned
12 that the electorate does not exactly know what our
13 Constitution is or what it purports to be. It is con-
14 ceivable that 100,000 people could sign such a petition
15 and place such a matter on the ballot and it could even
16 conceivably be passed.

17 I think then we would have undermined that
18 which we have written. I would prefer it go through the
19 General Assembly if there is difficulty and need for
20 correction. I am afraid we cannot leave all this in the
21 hands of the people.

1 THE CHAIRMAN: Any other delegate desire
2 to speak in favor of the amendment?

3 Delegate Gallagher.

4 DELEGATE GALLAGHER: Ladies and gentlemen,
5 it seems to me that we must never be afraid of the will
6 of the people and that consequently we must expect from
7 them the same consideration that we expect from members
8 of our deliberative bodies when considering legislation,
9 whether it be to add new legislation or to eliminate old
10 legislation.

11 I do think one of the most salutary features
12 of this proposal is the point that has already been
13 made that it is an escape valve so to speak for members
14 of the public who might feel particularly dissatisfied
15 about some aspect of the Constitution, but who, I think,
16 would be assured by the possibility of change initiated
17 from without the General Assembly or from without a
18 Constitutional Convention.

19 I think it has much to commend it. I think
20 the people feel it an aid when government is moving away
21 from the populace that this is an attempt to involve the

1 average person in significant determination of state
2 government. Consequently, I would urge its adoption.

3 THE CHAIRMAN: Delegate Sherbow.

4 DELEGATE SHERBOW: Mr. Chairman, ladies and
5 gentlemen, I would like to go back to some very simple
6 definitions. The proposal before you says an amendment
7 to the Constitution. That amendment can be a law. If it
8 is prepared in the form of an amendment to the
9 Constitution, you will need 91,000 signatures based on
10 the last election to get that placed before the electorate
11 for their determination. It may be a law directed at a
12 minority. It may be a law directed at some church-state
13 relationship. It may be a law directed at something
14 that today we are not cognizant of but in a few years
15 when this revolution through which we are living begins
16 to take greater hold, it may affect some matter
17 where tempers rise, emotions are at their zenith.

18 All we have here is 10 per cent of the voters
19 in a state that has three and a half million population.
20 California, they require 8 per cent of the state with a
21 population in excess of fifteen million. They sure made

1 one mess of it.

2 What I am saying here is if what we are
3 creating for our General Assembly is what we hope will
4 bring us that kind of General Assembly that is responsive
5 to modern needs, then let's have faith in it. What you
6 are doing here is providing for that which all of those
7 who have spoken for indirect initiative and backed away
8 from it are now sponsoring, because this does not have
9 to be the kind of amendment to the Constitution that would
10 pass Delegate Scanlan's inspection. It can be a simple
11 law and when it is passed, it is added to the Constitution.

12 If you think the present Constitution with a
13 couple hundred amendments is something that you are
14 trying to clean up and straighten out, just bear in
15 mind you are being asked to put into the new one some-
16 thing which will let 91,000 people bring to the voters a
17 question which they will vote on which may be a very simple
18 and sometimes devastating law you may be passing. I
19 shall vote against the amendment.

20 THE CHAIRMAN: Any other delegate desire to
21 speak in favor of the amendment? Any other delegate

1 desire to speak in opposition? Ready for the question?

2 The Clerk will ring the quorum bell.

3 The question arises on adoption of Amendment
4 No. 1. A vote Aye is a vote for the amendment. A vote
5 No is a vote against. Cast your votes.

6 (Whereupon, a roll call vote was taken.)

7 Has every delegate voted? Does any delegate
8 desire to change his vote? The Clerk will record the
9 vote.

10 There being 47 votes in the affirmative and
11 80 in the negative, the motion is lost, the amendment is
12 rejected.

13 Are there any further amendments to Committee
14 Recommendation GP-7?

15 Delegate Chabot.

16 DELEGATE CHABOT: Mr. Chairman, I wonder if I
17 might ask one question of the chairman of the committee
18 with regard to the last sentence of the proposal.

19 THE CHAIRMAN: State the question.

20 DELEGATE CHABOT: I wonder if the "unless
21 otherwise provided" clause on line 17 is intended to

1 apply only to the effective date or whether it is intended
2 to authorize the General Assembly to also change the
3 required vote that is intended in order to ratify an
4 amendment.

5 THE CHAIRMAN: Do you understand the question,
6 Delegate Boyer?

7 DELEGATE BOYER: Yes, sir.

8 THE CHAIRMAN: Delegate Boyer.

9 DELEGATE BOYER: The intention was to apply
10 only to the effective date.

11 THE CHAIRMAN: Delegate Chabot.

12 DELEGATE CHABOT: So it would be as if it had
13 read "unless a later effective date is provided" and
14 so forth.

15 THE CHAIRMAN: Could be an earlier effective
16 date presumably.

17 DELEGATE CHABOT: Unless a different effective
18 date.

19 THE CHAIRMAN: Will the chairman of the
20 Committee on Style note the questions and answers with
21 respect to the last question and answer of Committee

1 Recommendation GP-7.. Ready for the question?

2 The Clerk will ring the quorum bell.

3 The question arises on the approval of
4 Committee Recommendation GP-7. A vote aye is a vote in
5 favor of the recommendation. A vote no is a vote
6 against. Cast your votes. Has every delegate voted?
7 Does any delegate desire to change his vote? The Clerk
8 will record the vote.

9 There being 128 votes in the affirmative and
10 none in the negative, the motion is carried. Committee
11 Recommendation GP-7 is approved.

12 Next item on the agenda is consideration of
13 Committee Recommendation GP-8. The Chair recognizes
14 Delegate Boyer, Chairman of the Committee.

15 DELEGATE BOYER: Mr. Chairman, ladies and
16 gentlemen of the Committee of the Whole, GP-8, next in
17 our package of General Provisions recommendations, is,
18 as one delegate already said, more or less a companion
19 bill corresponding, which would follow the natural sequence
20 with GP-7 we just voted upon. GP-8 deals with the
21 proper method of calling a new Constitution Convention

1 the same way we have been organized here. I would direct
2 your attention perhaps to the meat or thrust of the
3 whole GP-8. It would be in the first sentence "The
4 General Assembly may by law call a Constitutional Con-
5 vention at any time or at any time submit to the voters
6 of the state the question of calling a Constitutional
7 Convention."

8 We felt there was a need of the first sentence
9 giving the General Assembly the authority to call the
10 convention. We learned the authority for calling the
11 convention was probably inherent in the state legislature
12 and there were several Court of Appeals cases in Maryland
13 on this point. We found that thirty-eight state
14 constitutions provide for calling of the convention and
15 all except one of the remaining states have called conven-
16 tions at one time or another.

17 However, we felt this principle had been the
18 cause for great dispute requiring sometimes court
19 adjudication. We felt we should spell out not just inherent
20 power of the legislature to call the convention but spell
21 it out in our present Constitution, because the inherent

1 power of the legislature to call the convention may be
2 dependent upon other constitutional provisions such as
3 declaration that all government emanate from the people
4 and may be changed by the people. We felt this specific
5 provision should be settled once and for all and we
6 therefore included in this GP-8.

7 This recommendation involves substantially
8 the Alaska Constitution and it permits, the way we have
9 presented it to you for your consideration, permits the
10 immediate legislative reaction to emergency situations.

11 There is one change in it we made that was
12 contrary to the draft recommendation, draft Commission
13 recommendation. That was that we change the term for
14 calling the convention from twenty years to twenty-five
15 years. I can see there is nothing magical about either
16 twenty-five or twenty. There were some recommendations
17 in the committee, numbers again, changing it from forty
18 back to ten, we finally decided on twenty-five years.

19 Number one, we found there was a similar
20 provision contained in eleven state constitutions including
21 three more recently adopted. That would be Alaska, Hawaii

1 and Michigan. We felt there were arguments for the
2 twenty-five year mandatory submission.

3 First, that there would be greater trust
4 placed in the properly apportioned and more responsible
5 legislature.

6 Second, we felt that the elimination of the
7 objectionable peculiarity from the Constitution would render
8 the Constitution more stable and decrease the need for
9 revision. One prime example of that, of course, is
10 the United States Federal Constitution.

11 Third, we felt that pressure may be exerted
12 upon the legislature to call for the convention.

13 Fourth, we felt the Constitution should not
14 be fundamentally revised to reflect changes in political
15 power over a shorter period of time.

16 Fifth, we felt the proper implimentation of
17 the Constitution does require several years preparation
18 and enactment.

19 Sixth, we felt that the liberal amendment
20 policy we just adopted further decreases the need for an
21 over-all revision on an earlier time basis.

1 Seventh, we felt that the requirement that
2 only a majority voting on the question may effect the
3 amendment or require a Constitutional Convention, and this
4 avoids frustration in obtaining the convention which
5 Maryland has suffered in the past starting in 1931, I
6 believe.

7 Lastly, we felt that the argument for twenty-
8 five year mandatory submission would add to the necessity
9 of requiring the convention within one year from the
10 mandate of the voters and it avoids the possibility of
11 frustration through legislative delay or refusal to
12 implement the people's mandate.

13 Mr. Chairman, we give to the Committee of the
14 Whole for their consideration Recommendation GP-8.

15 THE CHAIRMAN: Are there any questions of the
16 committee chairman?

17 Delegate Ritter.

18 DELEGATE RITTER: Mr. Chairman, I think the
19 sheets we have in our book are not complete.

20 THE CHAIRMAN: I am trying to find out. Some
21 of the copies are printed on two sheets, some are printed

1 on the front sheet and the reverse side. If you have a
2 sheet which has no printing on the reverse side, you have
3 an incomplete recommendation. There should be a page two.
4 Look and see if you have a separate page two.

5 DELEGATE RITTER: Nobody back here has page
6 two. You will have additional copies right away.

7 DELEGATE BOYER: I have two or three different
8 copies on blue paper, one of which says that this recom-
9 mendation covers Delegate Proposal No. 9 and 390. I would
10 appreciate your consent to delete or rub out No. 9 and
11 in place substitute No. 11.

12 THE CHAIRMAN: Are there any further questions
13 of the committee chairman while we are waiting for the
14 corrected copies? Delegate Mentzer.

15 DELEGATE MENTZER: Delegate Boyer, in line 22
16 and 23, I notice you have the legislature shall provide
17 for the filling of vacancies the position of delegate.
18 Is this a change over what we are operating under now?
19 Is that true? If so, was there a particular reason for
20 it?

21 DELEGATE BOYER: The enabling legislation that

1 created the convention under which we are operating
2 allows the Governor, should there be a vacancy prior to
3 the convening of the convention September 12, allowed the
4 Governor to fill that vacancy. After the convention
5 convenes and becomes an organic body, the convention
6 itself would have the right to fill that vacancy.

7 What we have recommended here was taken from
8 several other state constitutions and follows identically,
9 except for the change of twenty to twenty-five years,
10 follows identically the Commission Draft. This would
11 allow the General Assembly to fill the vacancy of any
12 delegate.

13 THE CHAIRMAN: Will the delegates who do not
14 have a corrected copy, that is, with page two printed
15 on the reverse of page one, please indicate and the pages
16 will bring you a corrected copy right away.

17 Committee Recommendation GP-8 should be
18 printed on the reverse as well as on the front.

19 Delegate Adkins.

20 DELEGATE ADKINS: I would like to ask the
21 chairman a question. I am troubled by this provision that

1 the General Assembly may call a Constitutional Convention
2 without reference to the people. I wonder if you would
3 elaborate a little on the committee's rationale behind
4 that provision since it is not in our present law and has
5 inherent in it a good many dangers.

6 THE CHAIRMAN: Delegate Adkins, I couldn't
7 hear what you said. It is certainly something about our
8 present law.

9 DELEGATE ADKINS: I think it is unlike our
10 present that the the General Assembly can call a
11 Constitutional Convention without referring it to the
12 people for ratification. I find this troublesome. I
13 would simply like reassurance as to their reasons for
14 the situation.

15 DELEGATE BOYER: We found there is a recent
16 case decided by the Court of Appeals, Board of Election
17 Supervisors v. Attorney General of Maryland decided
18 1967, which states authority to call a convention is
19 inherent in the state legislature. This spells out
20 the present case law on the subject.

21 THE CHAIRMAN: Delegate Adkins, the Chair

1 might add that probably you will recall there was an
2 opinion of the Attorney General in 1965 to the effect
3 that the legislature had the inherent power to call the
4 Constitutional Convention at any time either with or
5 without a prior referendum to the people to take the
6 sense of the people as to calling of a convention.

7 Delegate Koss.

8 DELEGATE KOSS: Delegate Boyer, I was wonder-
9 ing whether the language in line 13 would provide that
10 a convention should be convened and recessed within one
11 year after the vote. The term is the convention shall
12 be held or do you mean it should be convened within one
13 year?

14 DELEGATE BOYER: That's a better word possibly,
15 Delegate Koss. Convene is the intent.

16 THE CHAIRMAN: Delegate Koss.

17 DELEGATE KOSS: It seems to me that on the
18 basis of our experience for one year for a commission to
19 meet and the Convention to meet and complete its business
20 is a little meager.

21 DELEGATE BOYER: You have experience and in

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1 that experience would like this Convention, when you roll
2 up your sleeves and get down to work, can do the job.

3 THE CHAIRMAN: Any other questions of the
4 committee chairman? The Chair hears none. While he
5 returns to his seat, the Chair understands that there are
6 a series of amendments being proposed by Delegates
7 Needle, Hardwicke, and Sollins. I think these can be
8 better understood and considered by the Committee of
9 the Whole if they are presented first as a group although
10 they will be acted upon separately. The Chair, therefore,
11 calls on Delegate Needle and suggests you might come
12 forward to the reading desk, Delegate Needle, in view of
13 the number of amendments involved.

14 Delegate Adkins, the opinion of the Attorney
15 General to which I referred is printed in the final report
16 of the Commission beginning at Page 443.

17 Will the pages please pass out Amendments B,
18 you might also pass A, which is a recapitulation of all
19 of them, A, B, C, D, E, F, G.H, I, J. Pass out
20 Amendment A first because that is a summary.

21 DELEGATE NEEDLE: Mr. Chairman, about two

1 weeks ago Delegate Gallagher offered an amendment and
2 then he offered another amendment, another amendment,
3 and some member of this Convention said, Delegate
4 Gallagher, what is your whole program? It is my desire
5 to present to you my whole program at the outset.

6 For what purpose, Delegates Hardwicke and
7 Sollins and myself have prepared a memorandum which was
8 distributed about a week ago which I hope you have in
9 your books, which presents to you the amended section
10 on Constitutional Conventions if you were to adopt all
11 of the amendments which I am proposing at this time.
12 It was prepared in that fashion so that you could see
13 clearly exactly the purpose of each amendment.

14 I want to say at the outset that each amendment
15 which will be voted upon separately and not as a whole
16 stands by itself, is severable, is not dependent upon
17 any of the other amendments with the exception of the last
18 three, which are actually simply housekeeping amendments
19 to bring in line the balance of the provision with
20 earlier amendments if adopted by this Convention.

21 I purposely divided these amendments into nine

1 separate amendments so that they would not otherwise be
2 divisible by this body. They each present you with clear
3 and distinct different questions.

4 Note that the memorandum stated there will
5 be eight amendments. That the memorandum numbers each
6 amendment in the revised section and has two number
7 eights. The second number eight is now number nine.

8 There is one correction I wanted to make on
9 amendment D but because I think most of the delegates
10 probably don't have that yet, I will mention it when we
11 vote on Amendment D. I am going to make a presentation
12 now with respect to all of the amendments so that you can
13 understand the purpose of all in toto, then speak for only
14 a minute or so when we come to each and are about to
15 vote on each.

16 I am very proud of the job which this
17 Convention has done. We worked hard and the product
18 clearly reflects our careful deliberations.

19 We are writing a Constitution which will
20 create a viable and responsive state and local government
21 for the 20th and perhaps the 21st Centuries. We all

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1 hope it will endure for a great period of time. However,
2 by virtue of the nature of our deliberative body, we
3 made many compromises and some provisions have been
4 written and will be adopted which may very well not be to
5 the liking of all. I submit that many of those provisions,
6 as Delegate Scanlan has pointed out on numerous occasions,
7 are unnecessary, are too detailed, are inflexible, and
8 are statutory in nature.

9 In addition, I doubt that we are sufficiently
10 wise and visionary to create a document which will last
11 forever or even a hundred years as the current Constitution
12 has lasted. I think our Constitution will and should
13 reflect the thoughts of our time. It should definitely
14 be a living document.

15 Therefore, it will not necessarily be
16 representative of the views of the time a hundred years
17 from now or even fifty years from now. The relationship
18 of government to society is changing rapidly and our
19 society is increasing in its complexity at an alarming
20 rate.

21 I am not being critical for sure of the job

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1 we have done but, I think, realistic. The adoption and
2 the amendment and the revision of the Constitution is
3 the most basic exercise of the sovereign power of the
4 people for we should not put the ability of the people
5 to exercise that power out of their reach. I feel that
6 Committee Recommendation GP-8 is unduly restrictive in
7 several respects. We offer these amendments to free up
8 that procedure.

9 Remember that none of the procedures by
10 which a constitutional convention can be called requires
11 an overhauling of the Constitution. But they do permit
12 an outstanding deliberative body such as this one to
13 review the basic structure to determine if any changes
14 may be desirable.

15 I think this only gives recognition to the
16 job which we have done and I am asking you to pat your-
17 selves on the back a little by providing amendments for
18 calling together such a convention as this in the
19 reasonable near future.

20 I suggest that the most effective way to
21 study the entire structure of state and local government

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1 is by a body that can do something about it. There have
2 been any number of commissions here in Maryland which
3 have studied reorganization of various branches of the
4 government and have come up with some very laudatory
5 reports.

6 THE CHAIRMAN: You have used five of your
7 ten minutes, Delegate Needle.

8 DELEGATE NEEDLE: But those reports to a
9 large extent have been filed away and little has been
10 done about them.

11 In addition to that, I submit this is a
12 piecemeal manner in which to study the structure of our
13 government.

14 Some of you may ask what about the cost to this
15 state of calling of a convention? I submit that regard-
16 less of what that cost may be, and it is relatively
17 small, it is a small price to pay.

18 To get down to specifics. GP-8 only permits
19 the General Assembly to call a Constitutional Convention.
20 I can't understand why the Governor or the people by
21 petition should not also have the right to call a Constitu-

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1 tional Convention. I think that by virtue of your
2 rejection of the initiative for the submission of
3 amendments to the Constitution to the people that it is
4 now all the more important that you support the proposi-
5 tion that the people by petition should have the right
6 to call together a Constitutional Convention.

7 I submit that the General Assembly in its
8 self-interest, as in the past apparently, may not want
9 to call a Constitutional Convention. Why then should not
10 the Governor have the right to do so?

11 By the same token, why should the governor
12 have the veto power to reject the calling of a
13 Constitutional Convention if we otherwise state the
14 General Assembly may call one by law.

15 THE CHAIRMAN: You have three minutes including
16 time for questions, Delegate Needle.

17 DELEGATE NEEDLE: As Delegate Boyer has
18 pointed out GP-8 varies the Commission draft in that it
19 increases the time, the duration in which the question
20 shall be placed on the ballot from twenty to twenty-five
21 years. I would prefer to see that duration even shortened.

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1 Maryland is now one of the few states that has such a
2 long period of time but I would like to at least return it
3 to the twenty-year provision as recommended by the
4 Constitutional Convention Commission.

5 It may be desirable to impose an outside date
6 at which a Constitutional Convention must convene
7 if none of the provisions provided for the calling of one
8 prior to that are utilized. Such a date would necessarily
9 be arbitrary but I submit fifty years is reasonable under
10 the circumstances.

11 I also suggest that it is advisable to convene
12 a convention two years after call by whatever means in
13 order to give a commission an adequate chance to do its
14 work. Our commission did a marvelous job. I don't
15 think anybody would disagree with that. But it was
16 short on time, having two years in which to do it.

17 I will direct more detailed comments to each
18 amendment as it is voted on.

19 THE CHAIRMAN: Are there any questions of
20 the sponsor of the amendments? The Chair hears none.
21 If you will return to your chair, we will take up

1 consideration of each amendment.

2 First amendment to be considered will be
3 Amendment B. It will be Amendment 1. The Clerk will
4 read the amendment.

5 MR. QUILLEN: Amendment No. 1 to Committee
6 Recommendation GP-8, by Delegates Needle, Hardwicke,
7 and Sollins.

8 On page 1 in line 5 after the word "Assembly"
9 add the following words: "or the governor".

10 THE CHAIRMAN: The amendment having been
11 submitted by Delegate Needle and seconded by Delegates
12 Hardwicke and Sollins, the Chair recognizes Delegate
13 Needle.

14 DELEGATE NEEDLE: Mr. Chairman, as I just
15 mentioned, I think there is good reason for permitting
16 either policy-making branch of our government to call a
17 Constitutional Convention. Apparently the General
18 Provisions Committee has recognized this insofar as the
19 General Assembly is concerned. I can see reasons why the
20 General Assembly might not desire to call a Constitutional
21 Convention and therefore I feel that the Governor should

1 likewise have the right to call a Constitutional Convention
2 when he thinks one might be advisable or necessary.

3 Note that the right to call a Constitutional
4 Convention would not be delegable to a Lieutenant
5 Governor as this is specifically prescribed to the
6 Governor in this Constitution.

7 The recommendations accepted in the Executive
8 Committee's report would not permit this to be one of the
9 delegable responsibilities to the Lieutenant Governor.

10 I did not specify in my amendment the manner
11 in which, nor did the General Provisions Committee, the
12 manner in which a Constitutional Convention could be
13 called by the General Assembly. I would suggest that
14 it be by a constitutional majority of both houses but
15 I don't think that has to be stated.

16 THE CHAIRMAN: Delegate Boyer.

17 DELEGATE BOYER: Mr. Chairman, these amendments
18 are coming too fast. I can't keep up with them.

19 May I suggest in answering just the one on
20 Amendment B it would be my humble opinion this should be
21 rejected. First of all, I think that probably it would

1 make for bad language in the Style Committee if we merely
2 adopted Amendment B without considering also Amendment
3 C. It is inconceivable that the intention was that
4 the General Assembly or the Governor may by law call a
5 convention because obviously the Governor cannot make
6 law in this field.

7 I would suggest that in Delegate Needle's
8 statement that this should be left to either branch
9 of the policy-making departments of the government that
10 this might be an erroneous assumption.

11 In recent times, contrary to what the intention
12 is in separation of powers, we almost have three policy-
13 making branches of government including the judicial.
14 I am sure that on equal terms we certainly could not
15 include the judicial branch and allow them to have the
16 right to call a convention.

17 I think that by allowing or taking this
18 direct responsibility away from the General Assembly
19 alone indicates a sad distrust in the General Assembly,
20 the elective representatives of the people, who probably
21 are more responsive to the people's wishes than perhaps

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1 the Executive Department whose function is to enforce
2 the laws that are made by the Legislative Branch.

3 I would respectfully suggest for these and
4 many other reasons that Amendment B be rejected and allow
5 this to the elected representatives of the people to
6 call a Constitutional Convention.

7 THE CHAIRMAN: Any further discussion? Delegate
8 Hardwicke.

9 DELEGATE HARDWICKE: Mr. Chairman, in support
10 of the amendment, let me say that the whole purpose of
11 these series of amendments is to make it easy for
12 this state to have a Constitutional Convention. I
13 think all of us are aware that beginning about 1916
14 the old Constitution was getting a little bit creaky,
15 as it were, and yet it took us fifty years to get a
16 Constitutional Convention.

17 We feel that not only should this thing be
18 in the hands of the General Assembly, we submit that it
19 ought to be in the hands of the Governor and also the
20 people. If you vote for this amendment, you are going
21 to create one manner in which it will be easy to get a

1 Constitutional Convention. We will ask for the power to
2 the Governor.

3 THE CHAIRMAN: Any further discussion? Ready
4 for the question? The Clerk will ring the quorum bell.
5 The question arises on the adoption of Amendment No. 1.
6 A vote Aye is a vote in favor of the amendment. A
7 vote No is a vote against. Cast your votes. Has every
8 delegate voted? Does any delegate desire to change his
9 vote? The Clerk will record the vote.

10 There being 26 votes in the affirmative and
11 83 in the negative, the motion is lost, the amendment
12 fails.

13 Delegate Needle, I take it in view of that
14 vote you do not desire to offer your Amendment C.

15 DELEGATE NEEDLE: Mr. Chairman, I think it would
16 be appropriate to offer Amendment C.

17 THE CHAIRMAN: Delegate Needle, what did you
18 start to say?

19 DELEGATE NEEDLE: I think everyone has it
20 before them and I can make a very brief presentation.

21 THE CHAIRMAN: I wonder if you want to do

1 this because if you left out the words by law this would
2 under the rules that the Committee on Style has been
3 following mean the General Assembly could act by
4 resolution. I assume you mean they could act only by
5 law.

6 DELEGATE NEEDLE: I do not want for the
7 Governor to have a veto power over the holding of a
8 Constitutional Convention. That's my purpose in offering
9 this amendment.

10 THE CHAIRMAN: Very well.

11 Delegate Needle.

12 DELEGATE NEEDLE: I just stated the very
13 reason for offering the amendment. I don't think any
14 further elaboration is really necessary.

15 I simply foresee the possibility that the
16 Governor may not want the calling of a Constitutional
17 Convention in order to obviate the possible executive
18 reorganization and I don't think he should have that
19 right.

20 THE CHAIRMAN: Very well. Amendment C will
21 be Amendment No. 2. The Clerk will read the amendment.

1 MR. QUILLEN: Amendment No. 2 to Committee
2 Recommendation GP-8, by Delegates Needle, Hardwicke, and
3 Sollins.

4 On page 1 in line 5 strike out the words
5 "by law".

6 THE CHAIRMAN: The amendment having been
7 submitted by Delegate Needle, Hardwicke and Sollins, the
8 Chair recognizes Delegate Needle. Did you have any further
9 comment to make, Delegate Needle?

10 DELEGATE NEEDLE: No.

11 THE CHAIRMAN: Delegate Boyer.

12 DELEGATE BOYER: I again would respectfully
13 suggest to the Convention to reject Amendment C. It seems
14 a little inconsistent that Amendment B, on its one hand,
15 the proposers of the amendment wanted the governor to
16 call it, now they want to take away his right to have a
17 veto over it if it is passed by law.

18 There are only two ways the General Assembly
19 could accomplish this. One, by law or perhaps by
20 resolution. A resolution probably could not be vetoed.
21 A law could.

1 I think it would be inconsistent for the posture
2 of the sponsors to suggest in Amendment B that the
3 Governor should have the right in conjunction with the
4 General Assembly to call it and in Amendment C they would
5 not like to have the Governor have the right to veto the
6 General Assembly's action. I respectfully suggest
7 Amendment C be rejected.

8 THE CHAIRMAN: Any further discussion? Ready
9 for the question? The Clerk will ring the quorum bell.
10 The question arises on adoption of Amendment C. A vote
11 Aye is a vote in favor of the amendment. A vote No is
12 a vote against. Cast your votes. Has every delegate
13 voted? Does any delegate desire to change his vote.
14 The Clerk will record the vote.

15 (Whereupon a roll call vote was taken.)

16 There being 27 votes in the affirmative
17 and 86 in the negative, the motion is lost, the amendment
18 is rejected.

19 The next amendment is D. It will be Amendment
20 No. 3.

21 The Clerk will read the amendment.

1 MR. QUILLEN: Amendment No. 30 to Committee
2 Recommendation GP-8, by Delegates Needle, Hardwicke,
3 and Sollins.

4 On page 1 in line 9 after the period add this
5 new sentence: "If a petition, signed by a number of
6 qualified voters of the state equal to ten per cent of
7 the total number of votes cast for governor in the most
8 recent gubernatorial election, provided that not more than
9 one fourth of such number shall be voters in any one
10 county, is filed with the office of governor to refer to
11 the voters the question of calling a constitutional
12 convention, the question shall be submitted to a vote at
13 the next general election."

14 THE CHAIRMAN: The amendment is submitted
15 by Delegate Needle, seconded by Delegates Hardwicke and
16 Sollins. Please correct the typographical error in
17 line 5. Second word is "cast" instead of "case". The
18 Chair recognizes Delegate Needle.

19 DELEGATE NEEDLE: Mr. Chairman, I ask unanimous
20 consent to make one other typographical correction. On
21 line 7 change the word "sich," the word "such" should be

1 "the total".

2 THE CHAIRMAN: Is there any objection to
3 making the modification in Line 7 by striking the word
4 "such" and inserting the words "the total"?

5 The Chair hears none. The modification will
6 be made.

7 Delegate Needle.

8 DELEGATE NEEDLE: I would also like to say
9 at the outset for the benefit of the Committee on Style
10 in line 3 the words "qualified voters" could be changed
11 to "registered voters" consistent with whatever position
12 they take elsewhere in the Constitution as Delegate
13 Winslow indicated previously.

14 THE CHAIRMAN: Very well.

15 DELEGATE NEEDLE: This is the initiative
16 procedure for calling of a Constitutional Convention.
17 As I stated, I think it is now all the more important
18 that you support this amendment having rejected the
19 possibility of initiative submitting amendments to the
20 Constitution to the people.

21 Remember that this only requires that the

1 question of calling a Constitutional Convention be placed
2 on the ballot so that the people can determine whether or
3 not they want to call one. Then a convention would
4 have to recommend any changes in the constitution to
5 the people and it would come before the people at an election
6 for their ratification.

7 "By petition therefor" does not mean by any
8 stretch of the imagination there would be any changes
9 in our basic law. However, I think the people by the
10 initiative procedure should have the right to call a
11 Constitutional Convention. If they had that right,
12 surely we would have had a convention long before now.

13 The General Assembly, because I have not other-
14 wise spelled it out, would have the right to prescribe the
15 form of the petition, period of time for its circulation
16 among the voters, and all other specifics with relation
17 thereto.

18 I should also state that I feel it should be
19 placed on the ballot at least 60 days after the petition
20 is filed with the Office of the Governor, although I have
21

1 not specifically stated that and it can be left to the
2 General Assembly.

3 For the many reasons stated by Delegate
4 Winslow and others who spoke in support of the initiative
5 procedure with regard to constitutional amendments and for
6 the compelling reasons, I think, one should be permitted
7 to be placed on the ballot by initiative procedure of the
8 people the calling of a constitutional convention should
9 be subject to popular initiative.

10 THE CHAIRMAN: Any others?

11 Delegate Boyer.

12 DELEGATE BOYER: Mr. Chairman, I hate to keep
13 being a dirty bird and oppose my good friends, but again
14 I seriously suggest to the Committee of the Whole to
15 reject this amendment. First I am extremely confused.
16 If you follow the amendment on page 1 in line 9 after
17 the period, add this new sentence, I am extremely confused,
18 what would you do with, what the intention is to do with
19 the rest of the Recommendation GP-8. Would all that
20 be scratched or would this be an addition or supplementa-
21 tion or substitution or what?

1 That's one reason I would suggest rejecting
2 this amendment. Secondly, as Delegate Needle has very
3 properly stated, this is the initiative amendment,
4 exactly the same thing we previously rejected on the
5 amendment section. If anything, I would have much
6 preferred to have initiative on amendment to the
7 constitution rather than calling the convention itself for
8 a special interest group, with a well-heeled financial
9 campaign, could do great chaos to the Free State of
10 Maryland.

11 I believe for consistency's sake and many
12 other reasons, I would suggest rejection of this amendment
13 D.

14 THE CHAIRMAN: Any other discussion? Delegate
15 Needle.

16 DELEGATE NEEDLE: Simply for the purpose of
17 clarification, I did not delete any other portion of the
18 committee recommendation. This is simply a sentence to be
19 added. I do not think it is inconsistent with any other
20 portions of the committee recommendation.

21 THE CHAIRMAN: Any other discussion?

1 Delegate Grumbacher.

2 DELEGATE GRUMBACHER: Mr. Chairman, members
3 of the committee, I have been against initiative in every
4 form up until this particular point. The initiative in
5 all other cases is on a specific and single issue which
6 can in times of trouble cause us grave difficulties.

7 Since in this particular case the initiative
8 would put on the ballot the calling of a convention and
9 that convention, through the filter of that convention
10 would pass the problems of the state, I think we would
11 be perfectly safe to have the initiative.

12 A major reason for having the initiative in
13 here is to avoid the kind of thing we went through for
14 the past hundred years and particularly, I believe, the
15 past fifty, where we have been blocked and blocked very
16 much from having a constitutional convention because of
17 gross malapportionment. We think we may have cured that
18 problem in our present constitution but some things don't
19 stay cured the way you want them to. I think we must
20 have a different form in addition to the way laid out in
21 GP-8, a different way for us to call a convention.

1 This, I believe, is the soundest. I did
2 not like having the Governor call it. I do like very much
3 seeing the initiative being used. This initiative is under
4 tight control of 10 per cent of the voters, only one-
5 quarter from any one county. It only puts it on the
6 ballot and the ballot then only calls the convention.
7 The convention then acts and it goes back to the people
8 for ratification.

9 I am heartily in favor of this amendment.

10 THE CHAIRMAN: Any further discussion?

11 Delegate Wheatley.

12 DELEGATE WHEATLEY: Mr. Chairman, I have a
13 question for the sponsor of the amendment.

14 THE CHAIRMAN: Delegate Needle, will you take
15 the floor to yield to questions?

16 DELEGATE NEEDLE: Surely.

17 THE CHAIRMAN: Delegate Wheatley.

18 DELEGATE WHEATLEY: In requiring 10 per cent
19 of total number of votes cast for governor, what time
20 limitation would there be on this?

21 THE CHAIRMAN: Delegate Needle.

1 DELEGATE NEEDLE: I think that should be left
2 to the General Assembly, Delegate Wheatley. I think 90
3 or 120-day provision would be appropriate but I would
4 hesitate to write it into the constitution.

5 THE CHAIRMAN: Delegate Wheatley.

6 DELEGATE WHEATLEY: We are presented with
7 this, as provided by law, is that correct?

8 THE CHAIRMAN: Delegate Needle.

9 DELEGATE NEEDLE: That's my intention.

10 THE CHAIRMAN: Any further discussion? Ready
11 for the question? The Clerk will ring the quorum bell.

12 The question arises on the adoption of Amendment
13 No. 3. A vote Aye is a vote in favor of the amendment.
14 A vote No is a vote against. Cast your votes.

15 (Whereupon a roll call vote was taken.)

16 Has every delegate voted? Does any delegate
17 desire to change his vote? The Clerk will record the
18 vote.

19 There being 53 votes in the affirmative and
20 67 in the negative, the motion is lost, the amendment
21 is rejected.

1 The next amendment is number E. This will be
2 Amendment No. 4.

3 The Clerk will read the amendment.

4 MR. QUILLEN: Amendment No. 4 to Committee
5 Recommendation GP-8, by Delegates Needle, Hardwicke, and
6 Sollins.

7 On page 1 in lines 11 and 12 strike out the
8 following: "twenty-five" and insert in lieu thereof the
9 word "twenty".

10 THE CHAIRMAN: Amendment submitted by Delegate
11 Needle, seconded by Delegates Hardwicke and Sollins.
12 The Chair recognizes Delegate Needle.

13 DELEGATE NEEDLE: I am told by my seat mates
14 I have a winner this time. I see I am gaining strength.
15 I hope we have overwhelming support for this amendment
16 and you will approve all the others unanimously.

17 Maryland, with the present twenty-year duration
18 between those periods, the question of calling a consti-
19 tutional convention be placed on the ballot, is one of
20 nine states that have that provision. I don't know where
21 Delegate Boyer got his figures. You had a research paper

1 also done on this question. I find only one state, in
2 Maryland, has a twenty-five year provision as his committee
3 recommends. I find that most of the states average out
4 at approximately ten or twelve years. I thought the
5 model state constitution has a fifteen year provision.

6 I think increasing the duration is a step in
7 the wrong direction. As I stated earlier, I would prefer
8 to see a shorter period of time but I will settle for
9 the twenty years we now have.

10 Taken with the other provisions and your
11 failure to adopt the earlier amendments which would ease
12 the procedure by which a constitutional convention could
13 be called, I think it is compelling that you provide
14 that it be placed on the ballot at least every twenty
15 years.

16 THE CHAIRMAN: Delegate Boyer.

17 DELEGATE BOYER: Mr. Chairman, again in
18 support of the committee recommendation, I would urge
19 rejection of this amendment. We felt, as I reviewed before,
20 there are many arguments for a mandatory submission to
21 the people of twenty-five year interval for the constitutional

1 convention. We felt there would be greater trust placed
2 in a legislature that is going to be obviously more
3 regularly apportioned and more responsible to the people.
4 We here in this convention are trying to build up a
5 stronger branch of government both in the Executive,
6 Judicial and Legislative Departments and this would be
7 one good basic example of the trust we have in the General
8 Assembly we are trying to strengthen.

9 We felt that the arguments for a twenty-five
10 year mandatory submission would not only give greater
11 trust and faith in the General Assembly, but that it
12 would certainly help to give this constitution that we
13 are adopting now a more liberal chance to settle down and
14 iron the wrinkles out of the many problems that are going
15 to arise in the transitional period from the Convention
16 of the Constitution of 1867 to the one of the miracle
17 Convention of 1967.

18 We strongly urge that the committee recommen-
19 dation be upheld because we have gone into this and heard
20 witnesses from many sources on this area. It was the
21 considered opinion of the General Provisions Committee

1 that the year interval of twenty-five years for calling
2 the new constitution would be adequate, would give better
3 representation to the people, we felt it was for these
4 reasons we should go along with the twenty-five year
5 interval. I urge rejection of this amendment.

6 THE CHAIRMAN: Any further discussion?
7 Delegate Winslow.

8 DELEGATE WINSLOW: Mr. Chairman, it seems
9 to me that the remarks of Delegate Boyer we have just
10 heard are absolutely inconsistent with the recommendations
11 of his committee. For the recommendation of the
12 committee is that the General Assembly may call the
13 convention at any time.

14 Therefore, they wouldn't need to wait, if you
15 please, until things settled down after this convention
16 has closed up and the new convention has been called.

17 Thomas Jefferson has often been quoted on
18 this convention floor, so I take the liberty to cite him
19 once more. It was the opinion of that great American
20 Statesman that the people should have a chance once every
21 generation to vote on their fundamental law. I have tried

1 through the Maryland Planning Commission to find out how
2 long a generation lasts in the State of Maryland. The
3 nearest figure I can come to is nineteen years. Since
4 nineteen years does not fit the election schedule any more
5 than twenty-five years fits the election schedule, it
6 seems to me the choice Mr. Needle made of a twenty-year
7 period, particularly because it conforms to that which
8 we have been accustomed to for a hundred years, is an
9 excellent idea. I plead with you to vote for the
10 amendment.

11 THE CHAIRMAN: Any further discussion? Ready
12 for the question? The Clerk will ring the quorum bell.

13 The question arises on the adoption of
14 Amendment No. 4.

15 A vote Aye is a vote in favor of the amendment.
16 A vote No is a vote against. Cast your votes. Has every
17 delegate voted? Does any delegate desire to change his
18 vote. The Clerk will record the vote.

19 There being 70 votes in the affirmative and
20 55 in the negative, the motion is carried and the amendment
21 is adopted.

1 Next will be Amendment F, F for fox. This
2 will be No. 5.

3 The Clerk will read the amendment.

4 MR. QUILLEN: Amendment No. 5 to Committee
5 Recommendation GP-8 by Delegates Needle, Hardwicke, and
6 Sollins.

7 On page 1 in line 13 after the period add the
8 following new sentence: "In any event, there shall be a
9 constitutional convention fifty years from the effective
10 date of this constitution, unless the governor, General
11 Assembly or the voters of the state call a constitutional
12 convention at any time prior to then."

13 THE CHAIRMAN: The amendment having been
14 submitted by Delegate Needle, seconded by Delegates
15 Hardwicke and Sollins, the Chair recognizes Delegate
16 Needle.

17 DELEGATE NEEDLE: Mr. Chairman, I didn't want
18 for this convention to think that I or you would be in
19 any way discriminatory, I saw Delegate Fornos jump up soon
20 as you said that amendment was named for fox. It
21 is named for all those with the first initial being F

1 and everybody else in this convention. Does Delegate
2 Fornos want to comment?

3 THE CHAIRMAN: Delegate Fornos.

4 DELEGATE FORNOS: Mr. Chairman, members of
5 the Committee of the Whole, I think it is very appropriate
6 when the chairman of this great Committee of the Whole
7 recognizes this amendment as Amendment Fox that we
8 recognize in the gallery today two young men whose father
9 is a man who has given a lot to this convention and
10 certainly one of the greatest men we have had in this
11 convention. I would like to recognize Hamilton B. Fox,
12 III, student at Yale Law School and also Jefferson K.
13 Fox, student at Washington and Lee, and hope this Committee
14 of the Whole would give them a cordial welcome.

15 (Applause.)

16 THE CHAIRMAN: Delegate Needle.

17 DELEGATE NEEDLE: Mr. Chairman, I am glad to
18 see we have reversed the trend of my voting record. I
19 trust it will continue now.

20 I trust that you didn't reverse that trend
21 just because you wanted to maintain the status quo. That

1 has not been your way throughout this convention. I ask
2 you now to depart somewhat radically in Amendment 5.

3 In case all other methods of calling a
4 constitutional convention fail, I suggest that we mandate
5 in the constitution that a specified period of time be
6 indicated at which a constitutional convention shall meet.
7 Although I know any such period will necessarily be
8 arbitrary, I think fifty years under all the circumstances
9 is reasonable.

10 It is obvious that we are going to experience
11 a very rapid growth in the complexity of our society and
12 the concomitant increasing involvement and changing
13 pattern of relationship of government to this society and
14 it is ever more obvious that there need be a revision of
15 our basic structure of government to keep pace with that
16 increasingly complex society which will grow by geometric
17 proportions, surely disproportionately with the past.

18 Therefore, our constitution probably will not
19 and should not last anything near a hundred years. As I
20 said, it is and should be a living document reflecting
21 current feelings and attitudes. It will not necessarily

1 reflect those attitudes fifty years from now.

2 The calling of a convention at that period
3 in our history will not require an overhauling of our
4 constitution but will permit an outstanding deliberative
5 body such as this to consider the basic structure of our
6 government in toto with the ability to do something about
7 it.

8 THE CHAIRMAN: Delegate Boyer.

9 DELEGATE BOYER: Mr. Chairman, ladies and
10 gentlemen of the committee, I sincerely hope this
11 Convention will not adopt any amendment merely to increase
12 the batting average of an individual. I don't know who
13 said it, I am sure it wasn't Thomas Jefferson or Justice
14 Holmes or anybody, but over home we have a saying, even
15 a blind hog can root out an acorn once in a while. I
16 hope that acorn was Amendment No. 4.

17 Seriously I think this amendment is defeating
18 the wishes of the people. We just passed an amendment
19 saying that if by any other method the convention is not
20 called every twenty years now -- not twenty-five, but
21 every twenty years -- it will be submitted to the wishes

1 of the people at the next general election. To now say
2 nevertheless notwithstanding whatever the people may do
3 at this next general election approving or rejecting
4 constitutional convention, to now say that there shall be
5 automatically a new convention in fifty years, it seems
6 to me is putting a term ceiling on the life of what we are
7 doing here today.

8 Delegate Needle in his presentation of the
9 minority report did say the conditions and times fifty
10 years from now won't be what they are today. Perhaps he
11 is right. Perhaps his crystal ball is a little better than
12 mine. You don't know what the conditions are going to
13 be fifty years from now. It seems a shame for us to go
14 to all this trouble and make a constitution that we hope
15 will be equally as durable with all good luck and results
16 as the one you are now enjoying, to say it will auto-
17 matically die in fifty years seems like a waste of time and
18 effort here now.

19 I seriously urge that the convention reject
20 this amendment and say the constitution we are working
21 on will live until it is changed by the wishes of the

1 people and not make a ceiling, a lifetime term of merely
2 fifty years. I vote against the amendment.

3 THE CHAIRMAN: Any further discussion? Delegate
4 Chabot.

5 DELEGATE CHABOT: Parliamentary inquiry, Mr.
6 Chairman.

7 THE CHAIRMAN: State the inquiry.

8 DELEGATE CHABOT: In view of our votes on
9 amendment 1 and 3, should we merely ignore excess language
10 in lines 5 and 6?

11 THE CHAIRMAN: I think it would be better
12 that the amendment be corrected. Delegate Needle.
13 Do you have any objection to striking the words "unless"
14 or rather, the words "the governor" in line 5 and insert
15 or strike also the words "or the voters of the state" in
16 line 6?

17 DELEGATE NEEDLE: I was going to suggest that,
18 Mr. Chairman.

19 THE CHAIRMAN: Is there any objection to the
20 modification? The Chair hears none. The amendment will
21 be modified by striking from line 5 the words "the governor

1 comma", striking from line 6 the words "or the voters
2 of the state".

3 S to be added to call at the end of line 6.

4 The chair was in error. In line 5 strike
5 only the word "governor" and not the word "the" so that
6 it would read now in lines 5, 6, 7 and 8 "unless the
7 General Assembly calls a constitutional convention at any
8 time prior to then".

9 Delegate Wheatley.

10 DELEGATE WHEATLEY: Mr. Chairman, how would
11 that apply to the provision for a referendum in line 6?
12 Is this to presuppose that the call mentioned in the
13 amendment of the General Assembly would also include the
14 submission to referendum as the alternative method
15 provided for in committee recommendation on line 6, 7,
16 and 8? For example, if there was a referendum and the
17 ^{was} referendum/defeated would this then preclude this mandatory
18 provision? I would think this would --

19 THE CHAIRMAN: I think your point is well
20 taken, Delegate Wheatley. I think the correction was made
21 too quickly. I think the change in line 6 should not

1 have been made. Delegate Needle, would you concur?

2 DELEGATE NEEDLE: I think that's correct,
3 Mr. Chairman.

4 THE CHAIRMAN: Very well. The modification
5 should be then simply to strike from line 5 the word
6 "governor". No other change. Thank you, Delegate Wheatley.
7 Any further discussion? Ready for the
8 question?

9 The question arises on adoption of Amendment
10 No. 5 as modified. The Clerk will ring the quorum bell.

11 The question arises on adoption of Amendment
12 No. 5 as modified. A vote Aye is a vote in favor of
13 Amendment 5. A vote no is a vote against. Cast your
14 votes.

15 (Whereupon a roll call vote was taken.)

16 Has every delegate voted? Does any delegate
17 desire to change his vote?

18 The Clerk will record the vote.

19 There being 14 votes in the affirmative and
20 114 in the negative, the motion is lost, Amendment 5 is
21 rejected.

1 Next amendment will be Amendment H, H for
2 how, it will be Amendment No. 6.

3 The Clerk will read the amendment.

4 MR. QUILLEN: Amendment No. 6 to Committee
5 Recommendation No. GP-8, by Delegates Needle, Hardwicke,
6 and Sollins.

7 On page 1 in line 14 strike out the words
8 "one year" and insert in lieu thereof the following words:
9 "two years".

10 THE CHAIRMAN: The amendment having been
11 submitted by Delegate Needle, seconded by Delegates
12 Hardwicke and Sollins, the Chair recognizes Delegate
13 Needle.

14 DELEGATE NEEDLE: Mr. Chairman, did you say
15 this was Amendment H or G?

16 THE CHAIRMAN: Sorry. I don't have G. This
17 should be Amendment G, that will be Amendment 6. The
18 Clerk will read the amendment again.

19 Just a second. Let it stand and H will be 6
20 and we will come back to G. I don't think it will cause
21 any problems.

1 DELEGATE NEEDLE: I think Amendment H would
2 be dependent upon passage of Amendment G at least in
3 part of one of its sentences.

4 THE CHAIRMAN: Very well. Please correct
5 Amendment No. G, that will be Amendment 6. The Clerk
6 will read the amendment.

7 MR. QUILLEN: Amendment No. 6 to Committee
8 Recommendation GP-8, by Delegates Needle, Hardwicke,
9 and Sollins.

10 On page 1 in line 14 strike out the words
11 "one year" and insert in lieu thereof the following
12 words: "two years".

13 THE CHAIRMAN: The amendment having been
14 submitted by Delegate Needle and seconded by Delegates
15 Hardwicke and Sollins, the Chair recognizes Delegate
16 Needle.

17 DELEGATE NEEDLE: Mr. Chairman, this amendment
18 changes from one year to two years the time during which
19 a constitutional convention commission will have to do its
20 work.

21 Note that a constitutional convention commission

1 would be appointed within sixty days after a convention
2 is called. It must then organize, conduct its research,
3 its hearings, its deliberations, print its recommendations,
4 well before the election of delegates hopefully.

5 It would be impossible, I submit, to do
6 all this within the time otherwise permitted by Committee
7 Recommendation GP-8 which, if you figure carefully, would
8 be approximately six months.

9 I think the work of the constitutional
10 convention commission for this convention has been extremely
11 valuable to this convention. They did a marvelous job.
12 It took them about two years to do that job. I think any
13 future commission should be given a fair chance to do an
14 equally good job.

15 THE CHAIRMAN: Delegate Boyer.

16 DELEGATE BOYER: Mr. Chairman, ladies and
17 gentlemen of the committee, I think finally the sponsor of
18 this proposal, this amendment, and the committee may
19 not be too far apart. The issue is very clear. I
20 concur with Delegate Needle in his laudatory accolade
21 of the commission draft presented to us here before we

1 came.

2 But I think that here this committee would
3 have to decide, number one, can the commission, as appointed,
4 do a job in one year or, number two, in the alternative,
5 is it necessary for them to do it, should they have two
6 years.

7 Frankly, your Committee on General Provisions
8 met, we discussed this matter. We felt that an equally
9 good job could be accomplished in the one year term and
10 also could be made two, three, four, five years. We
11 suggested therefore for your consideration to adopt
12 the ~~one~~-year period in which the commission should get
13 their job finished. Leave it up to your good judgment.
14 If you feel they can do it in one year, vote with the
15 committee; if you feel it takes two years to do it, vote
16 with the amendment as proposed. Thank you.

17 THE CHAIRMAN: Any further discussion?

18 Ready for the question?

19 The Clerk will ring the quorum bell.

20 The question arises on adoption of Amendment
21 No. 6. A vote Aye is a vote in favor of the amendment.

1 A vote No is a vote against. Cast your votes.

2 (Whereupon, a roll call vote was taken.)

3 THE CHAIRMAN: Has every delegate voted?
4 Does any delegate desire to change his vote? The Clerk
5 will record the vote.

6 There being 100 votes in the affirmative
7 and 21 in the negative, the motion is carried, the amend-
8 ment is adopted.

9 Amendment H will now be Amendment No. 7.

10 Delegate James.

11 DELEGATE JAMES: I have been working without
12 benefit of a proper copy but it seems to me, I may be
13 subject to correction on this, if the time within which
14 the convention is to be called is changed from one year to
15 two years, then the time when the General Assembly shall
16 provide for the calling of the convention should be really
17 not the next regular session but the second regular
18 session after the decision of the voters is made. I
19 think some amendment to effect this change should be in
20 order. I haven't had a chance to --

21 THE CHAIRMAN: Delegate James, the Chair has

1 two suggestions to make. I don't know it would be
2 absolutely imperative to change the next section because
3 this would purely be providing for the convention, but,
4 in any event, should the change not be at the second
5 regular session but something like not later than at
6 the second regulat session --

7 DELEGATE JAMES: Something to that effect. I
8 am worried about this. I would have an election in the
9 fall, November, and the governor would have sixty days
10 to appoint his commission. It would be pressing things
11 rather hard to ask the commission to make all necessary
12 technical studies and provide a proper bill for the
13 calling of a convention to the General Assembly. You are
14 very familiar with all the problems involved in that.

15 THE CHAIRMAN: Would there be any objection
16 to considering the amendment of Delegate James that would
17 change the sentence beginning in line 18. Continuing
18 in line 19 so that instead of reading "at its next regular
19 session," it would read at "not later than the second
20 regular session"? With the understanding that the amend-
21 ment will be printed and circulated and on your desk later.

1 There is no objection to consideration of the amendment.
2 Therefore, this will be Amendment No. 7. In line 19
3 strike the words "its next" and insert the words "not
4 later than the second". The amendment is now before
5 you. Do you wish to comment further, Delegate James?

6 DELEGATE JAMES: No further comment.

7 THE CHAIRMAN: Delegate Boyer.

8 DELEGATE BOYER: Mr. Chairman, ladies and
9 gentlemen, with my limited knowledge of the legislature,
10 I would concur in Delegate James' suggestion. I think
11 it is very vital to correct, since we passed the last
12 amendment, it would be very vital to functions of an
13 efficient commission to allow the legislature a little
14 time to implement some of these provisions. I would not
15 oppose Senator James' amendment.

16 THE CHAIRMAN: Any further discussion? Ready
17 for the question? The Clerk will ring the quorum bell.
18 The question arises on the adoption of Amendment No. 7
19 to strike from line 19 the words "its next" and insert
20 in lieu thereof the words "not later than the second".

21 A vote Aye is a vote in favor of the amendment.

1 A vote No is a vote against. Cast your
2 votes.

3 (Whereupon, a roll call vote was taken.)

4 Has every delegate voted? Does any delegate
5 desire to change his vote? The Clerk will record the
6 vote.

7 There being 122 votes in the affirmative and
8 none in the negative, the motion is carried and the
9 amendment is passed.

10 Amendment H will therefore be Amendment No.
11 8. The Clerk will read the amendment.

12 MR. QUILLEN: Amendment No. 8 to Committee
13 Recommendation No. GP-8, by Delegates Needle, Hardwicke,
14 and Sollins.

15 On page 1 in line 16 after the word
16 "convention" insert the following words: "or within two
17 years after the governor or General Assembly calls a
18 convention".

19 THE CHAIRMAN: The amendment having been sub-
20 mitted by Delegate Needle and seconded by Delegates
21 Hardwicke, and Sollins, the Chair recognizes Delegate

1 Needle.

2 DELEGATE NEEDLE: Mr. Chairman, I ask
3 unanimous consent to delete the words "the governor or"
4 in lines 3 and 4 of the amendment.

5 THE CHAIRMAN: Is there any objection to
6 modifying the amendment by deleting in lines 3 and 4 the
7 words "the governor or"? The Chair hears none and
8 the amendment will be so modified.

9 Delegate Needle.

10 DELEGATE NEEDLE: Mr. Chairman, this is just
11 a housekeeping amendment to effectuate the change made
12 by virtue of Amendment No. 6 and I don't think requires
13 any further elaboration.

14 THE CHAIRMAN: Delegate Boyer.

15 DELEGATE BOYER: I concur with Delegate Needle
16 and in order to increase his batting average, I suggest
17 we approve this amendment.

18 THE CHAIRMAN: Any further discussion?
19 The Clerk will ring the quorum bell. The question arises
20 on the adoption of Amendment No. 8. A vote Aye is a vote
21 in favor of the amendment, a vote No is a vote against.

1 Cast your vote. Has every delegate voted? Does any
2 delegate desire to change his vote? The Clerk will
3 record the vote.

4 There being 116 votes in the affirmative and
5 none in the negative, the motion is carried, the amendment
6 is adopted.

7 Delegate Boileau.

8 DELEGATE BOILEAU: Mr. Chairman, I rise to
9 a point of personal privilege.

10 THE CHAIRMAN: State the privilege.

11 DELEGATE BOILEAU: In the gallery is one
12 of the many citizens who worked long and hard for one of
13 the delegates to this convention, Mr. William McDowell,
14 who was campaigning for Delegate Fornos. I hope the
15 convention will give him a warm welcome. (Applause.)

16 THE CHAIRMAN: Delegate Cicone.

17 DELEGATE CICONE: Mr. Chairman, I rise on a
18 point of personal privilege.

19 THE CHAIRMAN: State the privilege.

20 DELEGATE CICONE: We have with us today a very
21 proud mother, Mrs. Dabrowski, Sr., and Mrs. Edward

Dabrowski, Jr., Delegate Dabrowski's lovely wife. I wish

1 you would give them a welcome. (Applause.)

2 THE CHAIRMAN: Amendment I will be Amendment
3 9. The Clerk will read the amendment.

4 Delegate Needle.

5 DELEGATE NEEDLE: Mr. Chairman, I don't think
6 these last two amendments are going to be necessary.
7 They were also housekeeping amendments to bring in line
8 the section if we had adopted earlier amendments. I
9 think, by a quick count, I have four out of eight, a
10 500 batting average, and I better quit now. If I have
11 the consent of my other co-sponsors, I will withdraw
12 Amendments I and J.

13 THE CHAIRMAN: They have not been offered.
14 They will be scratched, Amendments I and J.

15 Delegate Carson, do you desire to offer your
16 amendment K?

17 DELEGATE CARSON: I do, Mr. Chairman.

18 THE CHAIRMAN: The pages will please distribute
19 Amendment K, K for king. This will be Amendment No. 9.
20 The Clerk will read the amendment.

21 MR. QUILLEN: Amendment No. 9, to Committee

1 Recommendation GP-8, by Delegates Carson and Scanlan.

2 On pages 1 and 2 strike out everything beginning
3 with the word "Within" in line 16 on page 1 down to and
4 including the word "procedure." in line 2 on page 2.

5 THE CHAIRMAN: The amendment having been
6 offered by Delegate Carson, seconded by Delegate Scanlan,
7 the Chair recognizes Delegate Carson to speak to it.

8 DELEGATE CARSON: Mr. Chairman, ladies and
9 gentlemen, I think it important to note what this amend-
10 ment intends to take out. If I would be permitted, I would
11 like to read the language that would go out if you vote
12 in favor of the amendment. The language to go out would
13 be as follows: "Within 60 days after such approval
14 the governor shall appoint a commission to prepare for
15 the convention. At its next regular session following
16 such a proposal, the General Assembly shall provide by
17 law for the assembling of the convention, election of
18 delegates, filling of vacancy to position of delegate and
19 appropriation of such funds for work of the convention.
20 The convention shall adopt its own rules of procedure."

21 Now the first sentence to go out relates to

1 when a commission would be appointed and says that it
2 would have to be appointed within 60 days after the
3 calling of a convention. We know that the commission
4 which preceded this convention was appointed by Governor
5 Tawes long before the people decided to call a constitu-
6 tional convention.

7 I think it is very unwise to restrict in the
8 constitution or to possibly restrict in the constitution
9 when the commission could be established. I think the
10 language is limiting at best or at worst.

11 Secondly, all remainder of the language within
12 the proposed section is statutory in nature, the
13 General Assembly has full power to provide for this, and
14 certainly would. I suggest to you that it is unnecessary
15 and we need not have this in the constitution. Therefore,
16 I advocate taking this language out and urge that if we
17 do so, we will have a better, more flexible document, and
18 I urge your support for this deletion and in favor of
19 the amendment.

20 THE CHAIRMAN: Delegate Boyer.

21 DELEGATE BOYER: Mr. Chairman, I have to

1 oppose this amendment. I think the way this convention
2 itself has worked out is living proof of the validity and
3 necessity of having rules of operation we have had.
4 The legislature passed the Enabling Act which brought into
5 being the organic body of this convention.

6 I think it would be important to make doubly
7 sure, make crystal clear, and in a voice loud and clear
8 we want the future conventions to be equally as practical,
9 as efficient and as workable as this one has been. We
10 found that this convention has adopted its own rules of
11 procedure. I would dislike very much to have the next
12 convention, whenever it may be, not have that same right.
13 It is entirely possible that if this is not included in
14 the constitution, perhaps some other body, perhaps the
15 General Assembly, shall work out rules of procedure under
16 which the new constitutional convention may operate.

17 I think this would be unfortunate.

18 The way the General Provisions Committee has
19 worded the language in GP-8 on this particular point is
20 exactly the way we are working now. I have found it to
21 be efficient and a practical way to do it. I would like

1 to guarantee to future constitutional conventions that they
2 shall have the same liberty, the same efficiency and same
3 practicalness as we have had. I suggest you vote against
4 this amendment.

5 THE CHAIRMAN: Delegate Boyer, the Chair wants
6 to ask a question as to the meaning of this section in
7 view of the comments made by Delegate Carson. He
8 indicated that the sentence beginning on lines 16
9 providing that a governor should appoint a commission
10 within 60 days after approval, that is approval by the
11 electorate of the calling of the convention, could be
12 considered as limiting. Does the committee intend by the
13 sentence beginning on line 16, that that shall be the only
14 provision authorizing a governor to appoint a commission?

15 DELEGATE BOYER: It was our intention to make
16 this a directive to the governor that within 60 days,
17 just as the language says, after approval by any source
18 whatsoever, that the governor shall, without any option at
19 all, shall appoint this commission.

20 THE CHAIRMAN: Was it intended to prevent the
21 governor from appointing such a commission even before an

1 election?

2 DELEGATE BOYER: No, there was no intent.
3 There is inherent power in the legislature that it can
4 call the constitutional convention, as Governor Tawes
5 did when he was governor, very able, efficient way he
6 did this, without any limitation on him at all. The
7 intent of that language is not to limit the governor.
8 He can make the appointment prior to the approval.

9 THE CHAIRMAN: Any further discussion? Delegate
10 Bamberger.

11 DELEGATE BAMBERGER: Mr. Chairman, I move
12 this question be divided making a separate question of
13 the deletion of the first sentence, that is, the one
14 which relates to the appointment of a commission, which
15 begins on line 16 with the word "Within" and ends on
16 line 18 with the word "convention". Second part of the
17 question to be the remaining two sentences.

18 THE CHAIRMAN: The Chair thinks the amendment
19 is divisible. The first question to be submitted will be
20 on the deletion of the sentence beginning in line 16,
21 the sentence reading "Within 60 days after such approval

1 the governor shall appoint a commission to prepare for
2 the convention".

3 Second question will be on the deletion of the
4 next two following sentences.

5 Any further discussion? Are you ready for
6 the question? Two questions will be submitted to you
7 separately.

8 The Clerk will ring the quorum bell.

9 The two questions arise on Amendment No. 9.
10 The first question, question now before you, is to delete
11 the sentence beginning in line 16 and reading "Within
12 60 days after such approval the governor shall appoint
13 a commission to prepare for the convention."

14 A vote Aye is a vote in favor of the deletion
15 of the sentence, a vote No is a vote against deletion of
16 the sentence. Cast your votes. Has every delegate
17 voted? Does any delegate desire to change his vote?

18 (Whereupon, a roll call vote was taken.)

19 The Clerk will record the vote.

20 There being 37 votes in the affirmative and
21 84 in the negative, the motion is lost, the first portion

1 of the amendment is rejected.

2 The question now arises with respect to
3 Amendment 9 on the adoption of the second question which
4 will be the deletion of the two sentences beginning in
5 line 18 and reading "At not later than the second regular
6 session following such approval, the General Assembly
7 shall provide by law for assembling of a convention,
8 election of delegates, filling of vacancies, and position
9 of delegate and appropriation of sufficient funds for
10 the work of the convention. The convention shall adopt
11 its own rules of procedure."

12 A vote Aye is a vote for the deletion of
13 those two sentences. A vote no is a vote against deletion.
14 Case your votes.

15 (Whereupon, a roll call vote was taken.)

16 Has every delegate voted? Does any delegate
17 desire to change his vote? The Clerk will record the
18 vote.

19 There being 30 votes in the affirmative and
20 92 in the negative, the motion is lost, the second portion
21 of the amendment is rejected, entire amendment 9 is

1 rejected.

2 The Chair has no other amendments. Delegate
3 Needle.

4 DELEGATE NEEDLE: Mr. Chairman, I think I
5 may have acted a little too hastily in indicating I would
6 not offer Amendment I. Delegate Marion just convinced
7 me I should increase my batting average. I think it
8 again is a housekeeping amendment which will effectuate
9 earlier changes made.

10 THE CHAIRMAN: Amendment No. 10, Amendment I
11 is Amendment 10.

12 Delegate Storm.

13 DELEGATE STORM: Mr. Chairman, I am not sure
14 whether I am confused or whether this was a mistake.

15 I had the amendment labeled H as in Harold or
16 Harry, whatever that was, as No.8.

17 THE CHAIRMAN: That is correct.

18 DELEGATE STORM: Then I had the deletion of
19 the first sentence in line 16, first part of the Carson
20 amendment, as No. 8.

21 THE CHAIRMAN: No. That is 9. Perhaps we

1 should designate the two parts of 9 as 9A and 9B.

2 DELEGATE STORM: Good. Thank you.

3 THE CHAIRMAN: Amendment 10 is Amendment I.
4 The Clerk will read the amendment.

5 MR. QUILLEN: Amendment No. 10 to Committee
6 Recommendation GP-8, by Delegates Needle, Hardwicke, and
7 Sollins.

8 On page 1 in Line 17 after the word "approval"
9 add the words "by the voters or within 60 days after the
10 governor or General Assembly called the convention."

11 THE CHAIRMAN: Delegate Storm, I think probably
12 we better not designate those as 9A and B because that's
13 the method of numbering we use for amendments to amendments.
14 Just call it 9 first part and 9 second part.

15 DELEGATE STORM: The reason I raised the
16 question, I thought the light up there gave the No. 8
17 twice. I may be wrong.

18 THE CHAIRMAN: I don't know. I don't know
19 which way the vote was now. The amendment K was Amendment
20 9. H was 8. For what purpose does Delegate Case rise?

21 DELEGATE CASE: Mr. Chairman, when you say

1 scratch, people in this room really scratch. We haven't
2 got the amendment any more.

3 THE CHAIRMAN: Chief Page Marx, do you have
4 additional copies of Amendment I? Any other delegates
5 who do not have I? For what purpose does Delegate
6 Harry Taylor rise?

7 DELEGATE HARRY TAYLOR: Point of personal
8 privilege.

9 THE CHAIRMAN: State the privilege.

10 DELEGATE HARRY TAYLOR: In the balcony we
11 have with us this afternoon Mr. John Mitchell who is
12 a prominent attorney in Upper Marlboro, Maryland, Prince
13 Georges County, who served on the constitutional convention
14 commission. He is hidden up there behind the pillar next
15 to Dr. Byrd. I hope you will join me in giving him the
16 convention's usual warm welcome. (Applause.)

17 THE CHAIRMAN: Amendment No. 10 proposed by
18 Delegate Needle, seconded by Delegates Hardwicke and
19 Sollins. The Chair recognizes Delegate Needle.

20 Delegate Needle; you have a modification to
21 make first?

1 DELEGATE NEEDLE: Exactly. The Chair has
2 apparently realized it too. The word "governor" should
3 be stricken.

4 THE CHAIRMAN: Any objection to striking
5 from line 3 the words "governor or"?
6 The Chair hears none. The modification will be made.

7 DELEGATE NEEDLE: This requires no explanation.
8 It serves to make consistent the entire section in view of
9 an earlier modification by a prior amendment so that the
10 sentence on line 16 will read: "Within 60 days
11 after such a proposal by the voters or within 60 days
12 after the General Assembly calls a convention the
13 governor shall appoint a commission to prepare for the
14 convention."

15 THE CHAIRMAN: Delegate Boyer.

16 DELEGATE BOYER: Mr. Chairman, at first blush
17 when I saw it, it appeared to be a housekeeping amendment.
18 I was kind of surprised when it was withdrawn. I wonder
19 if Delegate Needle would yield and tell me why he has
20 had reflection/ this. I want the record to be crystal
21 clear why we are now resubmitting it.

1 THE CHAIRMAN: Delegate Needle.

2 DELEGATE NEEDLE: I was so excited by the over-
3 whelming vote on the prior amendment I decided to with-
4 draw all others, and Delegate Marion convinced me I
5 should increase my batting average with this one.

6 THE CHAIRMAN: Delegate Boyer.

7 DELEGATE BOYER: Mr. Chairman, I must agree
8 with Delegate Needle and rather than perform oral
9 Karate on him and try to make a slugger out of him, I
10 would concur in the amendment.

11 THE CHAIRMAN: Any further discussion? Ready
12 for the question? The Clerk will ring the quorum bell.

13 The question arises on adoption of Amendment
14 10. A vote Aye is a vote in favor of the amendment, a
15 vote No a vote against. Cast your vote.

16 (Whereupon, a roll call vote was taken.)

17 Has every delegate voted? Does any delegate
18 desire to change his vote? The Clerk will record the
19 vote.

20 There being 114 votes in the affirmative and
21 none in the negative, the motion is carried and the

1 amendment is adopted. It has become obvious there is
2 another row that operates by consensus. Any further
3 amendments?

4 If not, the question arises on the approval
5 of Committee Recommendation GP-8 as amended. Are you
6 ready for the question?

7 The Clerk will ring the quorum bell.

8 The question arises on the approval of
9 Committee Recommendation GP-8 as amended.

10 A vote Aye is a vote in favor of the approval
11 of the recommendation as amended. A vote No is a vote
12 against. Cast your votes.

13 (Whereupon, a roll call vote was taken.)

14 Has every delegate voted? Does any delegate
15 desire to change his vote? The Clerk will record the
16 vote.

17 There being 114 votes in the affirmative and
18 4 in the negative, the motion is carried, the Committee
19 Recommendation GP-8 is approved.

20 The Chair recognizes Delegate Powers, Chairman
21 of the Committee on Calendar and Agenda.

1 DELEGATE POWERS: Mr. Chairman, I move the
2 Committee of the Whole rise and report as follows.
3 One, the committee desires to postpone consideration of
4 Committee Recommendation GP-5 until a later date.

5 Two, the committee reports approval of
6 Committee Recommendation No. GP-6 as amended.

7 Three, the Committee reports the approval of
8 Committee Recommendation GP-7.

9 Four, The committee reports approval of
10 Committee recommendation GP-8 as amended..

11 THE CHAIRMAN: Second?

12 (The motion was duly seconded.)

13 THE CHAIRMAN: All in favor, signify by saying
14 Aye; contrary, No. The Ayes have it. So ordered.

15 (The mace was replaced by the Sergeant at Arms.)

16 (Whereupon, at 6:15 p.m. the Committee of the
17 Whole rose, and the Convention reconvened.)

18 THE PRESIDENT: The Convention will please
19 come to order.

20 On behalf of the Committee of the Whole, the
21 Chair reports that the committee desires to resume

1 consideration of Committee Recommendation GP-5 at a later
2 date and that the committee has approved Committee
3 Recommendation GP-6 as amended, has approval Committee
4 Recommendation GP-7, has approved Committee Recommendation
5 GP-8, as amended.

6 Committee Recommendations No. GP-6, as amended,
7 GP-7, GP-8, as amended, and the reports of the Committee
8 of the Whole with respect thereto are referred respectively
9 to the Committee on Style, Drafting and Arrangement.

10 Reports of standing committees, Mr. Clerk.

11 Committee Recommendation GP-12. The Clerk
12 will read the recommendation.

13 MR. QUILLEN: Committee Recommendation GP-12,
14 by the Committee on General Provisions, Elroy G. Boyer,
15 Chairman. A recommendation that the Constitution include
16 a provision on effective date to read as follows:

17 THE PRESIDENT: The Committee Recommendation GP-12
18 is referred to the Committee of the Whole. Committee
19 Memorandum GP-12. The Clerk will read the memorandum.

20 MR. QUILLEN: The Committee Memorandum No. GP-12.

21 This section fulfills the requirement of Section

1 16 of Chapter 4 of the Acts of 1967 (the Enabling Act
2 for this Convention).

3 THE PRESIDENT: Committee Memorandum GP-12
4 will be received and distributed.

5 Committee Recommendation GP-12 being received
6 after November 17 requires the approval of the Convention.
7 The Chair recognizes Delegate Boyer to move such approval.

8 DELEGATE BOYER: Mr. Chairman, I so move.

9 (Whereupon the motion was duly seconded.)

10 THE PRESIDENT: The question arises on the
11 motion to permit Committee Recommendation GP-12 to be
12 received. All in favor, signify by saying Aye; contrary,
13 No. The Ayes have it. So ordered.

14 Memorandum in support of Committee Recommenda-
15 tion GP-11. Do you have it, Mr. Clerk? The Clerk will
16 read the memorandum.

17 MR. QUILLEN: Memorandum in support of
18 Committee Recommendation PG-11, by Delegate Grant, concern-
19 ing the basic maxim of the constitutional government.

20 THE PRESIDENT: The memorandum will be
21 received and distributed. Are there any announcements

1 by committee chairmen necessary to be made before dinner
2 recess? Any announcements by other delegates?

3 All delegates present now not present at
4 roll call may indicate their presence on the supplemental
5 roll call.

6 (Whereupon, supplemental roll call was taken.)

7 The Clerk will record the supplemental roll
8 call.

9 The Chair recognizes Delegate Powers, Chairman
10 of the Committee on Calendar and Agenda.

11 DELEGATE POWERS: Mr. President, I move we
12 recess until 7:45. (Seconded.)

13 THE PRESIDENT: All in favor signify by
14 saying Aye; contrary, No. The Ayes have it. It is
15 so ordered.

16 (Whereupon the Convention adjourned at
17 6:20 p.m. to reconvene at 7:45 p.m. the same day.)

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21

1 EVENING SESSION

2 December 19, 1967 - 8:00 p.m.

3 THE PRESIDENT: The Convention will please
4 come to order.

5 Roll call.

6 Have all Delegates answered roll call?

7 The Clerk will record the roll call.

8 There being a quorum present, the Convention
9 is in session.

10 Reports of Committees?

11 Report No. 7 of the Committee on style,
12 drafting, and arrangement.13 MR. QUILLEN: Committee on style, drafting
14 and arrangement, Report No. 7, this report covers matters
15 in Committee of the Whole Report No. 7, a report concerning
16 Committee Recommendation No. LG-1.17 THE PRESIDENT: The report is referred to the
18 Committee on Calendar and Agenda.

19 Any other reports, Mr. Clerk?

20 MR. QUILLEN: No other reports, Mr. President.

21 THE PRESIDENT: Motions and resolutions.

1 The Chair recognizes Delegate Powers.

2 DELEGATE POWERS: Mr. President, Motion No.

3 7.

4 THE PRESIDENT: The Clerk will read the motion.

5 MR. QUILLEN: Motion No. 7 by Delegate Powers,
6 "A motion to make reconsideration of GP-4 a special order
7 and limit debate".

8 THE PRESIDENT: Is there a second?

9 (Whereupon, the motion was seconded.)

10 THE PRESIDENT: The motion having been seconded,
11 the Chair recognizes Delegate Powers.

12 DELEGATE POWERS: Mr. President, this motion,
13 I don't know whether it has been fully distributed, but
14 it provides that Committee Recommendation GP-4 be made a
15 special order for twelve noon --

16 THE PRESIDENT: Just a minute.

17 Will the pages distribute the motion?

18 Delegates who have not received the motion, please
19 indicate to the pages.

20 Delegate Powers.

21 DELEGATE POWERS: Mr. President, this motion

1 provides that Committee Recommendation No. GP-4 which
2 was moved by Delegate Johnson for reconsideration be set
3 for special order at noon tomorrow and that the debate
4 be limited to thirty minutes, fifteen minutes per side,
5 and two minutes for each speech.

6 THE PRESIDENT: Any questions?

7 Delegate Bard.

8 DELEGATE BARD: Mr. President, would it be in
9 order to cut this further to ten minutes each?

10 THE PRESIDENT: Well, I think that the Committee
11 on Calendar and Agenda has given pretty careful thought
12 to it. You don't have to use the full time merely because
13 it is allowed in the schedule.

14 Delegate Powers.

15 DELEGATE POWERS: Our position is that the
16 entire thirty minutes need not be utilized.

17 THE PRESIDENT: Delegate Scanlan.

18 DELEGATE SCANLAN: Delegate Bard anticipated
19 my reaction. It is all very well to say we hope that the
20 thirty minutes will not be utilized, but it is almost our
21 universal experience that the thirty minutes will be

1 utilized. I move, therefore, to amend ^{motion and} the/ change thirty
2 minutes to twenty minutes and to allow ten minutes for
3 each side.

4 (Whereupon, the motion was seconded.)

5 THE PRESIDENT: Very well. It has been moved
6 that the motion be amended so as to limit the time to
7 a total of twenty minutes instead of thirty, ten minutes
8 to each side.

9 Any further discussion?

10 Delegate Beatrice Miller.

11 DELEGATE BEATRICE MILLER: I would like to
12 request information from the Chairman of the Committee
13 on Calendar, whether he has and his Committee has considered
14 if we reconsider each motion, each session of this
15 Convention, and granted even twenty minutes each, whether
16 or not we can finish January 12. Has his Committee
17 considered this?

18 THE PRESIDENT: Delegate Powers.

19 DELEGATE POWERS: Mr. President, this particular
20 question is in a little bit different category in that the
21 vote by which the Committee Recommendation was adopted

1 was less than the necessary seventy-two.

2 The purpose of setting it at a time certain
3 was that as many delegates as possible would be here. It
4 was thought under the circumstances that this would
5 possibly require a little bit more time than the usual
6 motions for reconsideration.

7 THE PRESIDENT: Delegate Boileau.

8 DELEGATE BOILEAU: Mr. Chairman, I was the
9 seconder of the motion, and I did, in fact, second it
10 because of the point that Chairman Powers made, that there
11 hadn't been a sufficient number of delegates here and I
12 wouldn't be the least bit concerned if there was no
13 debate over it and I think there has been more than
14 adequate debate on that particular question.

15 THE PRESIDENT: The Chair suggests that we
16 are wasting more time considering whether there should
17 be a debate than if we went ahead.

18 (Applause)

19 THE PRESIDENT: The question arises to limit
20 the debate to twenty minutes with ten minutes for each
21 side. All in favor signify by saying Aye; contrary, No.

1 The Ayes have it and so ordered.

2 The question arises on the adoption of Motion
3 No. 7 as amended. All in favor signify by saying Aye;
4 contrary No.

5 The Ayes seem to have it. The Ayes have it
6 and so ordered. Motion No. 7 as amended is adopted.

7 Are there any further motions or resolutions?

8 The Chair recognizes Delegate Powers.

9 DELEGATE POWERS: Mr. President, in connection
10 with Committee Recommendations LB-3 and JB-2 which are
11 next on the agenda after we conclude the Committee
12 recommendations on general provisions, I move that the
13 debate on these Committee recommendations be limited to
14 the extent that the presentation by the sponsor of the
15 amendment be allowed ten minutes including time yielded
16 for answering questions and that all other speeches be
17 limited to three minutes. There is no debate schedule
18 on this because there is no minority report and this is
19 following the usual practice that we have adopted in the
20 course of consideration of all Committee recommendations.

21 THE PRESIDENT: Is there a second?

1 Any discussion?

2 Ready for the question?

3 All in favor of the motion signify by saying
4 Aye; contrary No.

5 The Ayes have it and the motion limiting
6 debate on Committee Recommendations LB-3 and JB-2 is
7 carried.

8 The Chair recognizes Delegate Powers.

9 DELEGATE POWERS: Mr. President, I move that the
10 Convention resolve itself into a Committee of the Whole
11 for the purpose of considering general orders of the
12 day.

13 THE PRESIDENT: Delegate Powers, before putting
14 that motion, the Committee of the Whole at the last
15 sitting reported that further consideration of Committee
16 Recommendation GP-5 be reported at a further date. There
17 was no action by the Convention on that. Would you move
18 that the item be deleted from the calendar?

19 DELEGATE POWERS: Mr. President, I move
20 that the item involving consideration of Committee
21 Recommendation GP-5 be deleted from the calendar now

1 under consideration by the Committee of the Whole and be
2 set for a later date.

3 THE PRESIDENT: Is there a second?

4 (Whereupon, the motion was seconded.)

5 THE PRESIDENT: All in favor signify by saying
6 Aye; contrary No.

7 The Ayes have it and Item 9-B on the calendar
8 is deleted.

9 The question now arises on the motion of Delegate
10 Powers that the Convention resolve itself into a Committee
11 of the Whole. All in favor signify by saying Aye;
12 contrary No.

13 The Ayes have it, and it is so ordered.

14 (The mace was removed by the Sergeant at Arms.)

15 (Whereupon, at 8:10 p.m. the Convention
16 resolved itself into the Committee of the Whole.)

17 THE CHAIRMAN: The Committee of the Whole
18 will please come to order.

19 The next item for consideration on the agenda
20 for the Committee of the Whole is Committee Recommendation
21 GP-9. The Chair recognizes Delegate Boyer, Chairman of

1 the Committee.

2 DELEGATE BOYER: Mr. Chairman and ladies and
3 gentlemen of the Committee of the Whole, GP-9 is the
4 General Provisions Recommendation on the retention of the
5 common law theory as derived from the ancient English
6 law. I frankly confess that I feel rather devastated
7 and disappointed because I had an excellent speech prepared
8 to give to you trying to retain what you have before
9 you known as GP-9.

10 However, as a result of some problems that we
11 had dealing with the Transitory Provisions, the imple-
12 mentation of this Constitution, trying to blend it in
13 with the present one, it was decided, and this is with
14 the approval of the Committee that we would request that
15 you would adopt an amendment which I believe is lettered
16 Amendment A.

17 THE CHAIRMAN: Will the pages please distribute
18 Amendment A?

19 DELEGATE BOYER: And if I may, Mr. Chairman,
20 I will then speak on this amendment A, rather than GP-9.

21 THE CHAIRMAN: Yes.

1 DELEGATE BOYER: We found, frankly, much to
2 my amazement, that our recommendation of GP-9 dealing
3 only with common law evidently did not go far enough in
4 order to protect the implementation of the various
5 statutory and constitutional concepts that we would like
6 to have incorporated in future case law and in the future
7 Constitution.

8 GP-9 dealing only with ancient statutory law
9 was the result, the finished product, of the General
10 Provisions Committee hearing many witnesses, including
11 judges on the Court of Appeals.

12 But on the Transitory Committee, particularly
13 the Local Government Committee, I had some problems that
14 did not fit in with our Recommendation GP-9 and this was
15 sort of like opening Pandora's box, and there were many
16 other matters that then flowed into the conversation that
17 evidently GP-9 which was our intention to cover everything,
18 did not.

19 For that reason we recommend for your
20 consideration the Amendment A on GP-9 and ask that it
21 be considered because we feel it to be more encompassing

1 and more inclusive and more direct for the purposes of
2 this new Constitution.

3 THE CHAIRMAN: Are there any questions of the
4 Committee Chairman?

5 Delegate Moser.

6 DELEGATE MOSER: Chairman Boyer, I take it
7 in line 13 of the amendment where it refers, where the
8 words appear "or as lawfully changed", that means the
9 changes can occur in any manner, including a change in
10 existing law made by the schedule of legislation which
11 will accompany the Constitution. Is that correct?

12 THE CHAIRMAN: Delegate Boyer.

13 DELEGATE BOYER: I am glad you said that,
14 Delegate Moser, because you wrote the amendment, and I
15 would imagine that you would know more about it than
16 anybody, but, yes, that is correct.

17 DELEGATE MOSER: You and I intend the same
18 thing, I take it.

19 The second question, I assume that the amendment
20 does encompass everything that is encompassed in your
21 original Committee Recommendation GP-9, does it not?

1 THE CHAIRMAN: Delegate Boyer.

2 DELEGATE BOYER: Yes, there are three words
3 that we, as a General Provisions Committee, were rather
4 proud of our authorship on it, and the three words are
5 "including common law", and we thought that would cover
6 everything we had in GP-9. Are there any other questions
7 of the Committee?

8 THE CHAIRMAN: Delegate Chabot.

9 DELEGATE CHABOT: Delegate Boyer, I would like
10 to ask you about those three words as they fit in with the
11 words "is lawfully changed". One of the general uses
12 of the common law is that it can be changed. The courts
13 can evolve it. Do those two phrases mean that we do not
14 intend to freeze perpetually the common law as it now is,
15 but we intend to permit it to continue to be changed
16 also as it has been changed?

17 THE CHAIRMAN: Delegate Boyer.

18 DELEGATE BOYER: Yes, this is absolutely true
19 and I am awfully glad you brought that up. It is not our
20 intention to remain frozen in our common law. It should
21 remain flexible, and we should keep it that way.

1 DELEGATE GRANT: I assume you mean you herein
2 adapt all the interpretations of the common law as made
3 by the Court of Appeals as of the date of the Constitution?

4 DELEGATE BOYER: As of the effective date of
5 the Constitution, that would be the difference between
6 now and June 30th, 1968.

7 THE CHAIRMAN: Any other questions of the
8 Committee Chairman? There appear to be none. If not,
9 Delegate Boyer will return to his seat.

10 The pages have distributed Amendment A which
11 will be Amendment No. 1.

12 The Clerk will read the provision.

13 MR. QUILLEN: Amendment No. 1 to Committee
14 Recommendation No. GP-9 by the Committee on General
15 Provisions, Elroy G. Boyer, Chairman:

16 On pages 1 and 2 strike out all of lines
17 2 through 25 on page 1 and all of lines 1, 2 and 3 on
18 page 2 and insert in lieu thereof the following:
19 "provisions dealing with the effect of this Constitution
20 on existing legislation and on enumerated legal writs,
21 actions and proceedings as follows:

1 All legislation, including local legislation,
2 and all other law, including common law, in force on
3 June 30, 1968, insofar as not in conflict with this
4 Constitution, shall continue in force until it expires
5 by its own limitation, or is lawfully changed, and all
6 existing writs, actions, suits, proceedings, civil or
7 criminal liabilities, prosecutions, judgments, sentences,
8 orders, decrees, appeals, causes of action, contracts,
9 claims, demands, property titles and rights shall continue
10 unaffected except as modified in accordance with the
11 provisions of this Constitution."

12 THE CHAIRMAN: The amendment having been
13 submitted by Delegate Boyer on behalf of the Committee on
14 General Provisions, the amendment having been seconded, the
15 Chair recognizes Delegate Boyer.

16 DELEGATE BOYER: There is very little I can
17 add, except to be redundant, of what I have already
18 presented. It was the consensus of the General Provisions
19 Committee that this amendment would be more inclusive
20 than GP-9. I say this reluctantly because we had a
21 pride of authorship in GP-9. We copied directly out of

1 the present Constitution. We recommend that you adopt
2 it.

3 THE CHAIRMAN: Any further discussion?

4 Are you ready for the question?

5 The Clerk will ring the quorum bell.

6 The question arises on the adoption of Amend-
7 ment No. 1. A vote Aye is a vote in favor of the amendment;
8 a vote No is a vote against.

9 Cast your votes.

10 Has every delegate voted?

11 Does any delegate desire to change his vote?

12 The Clerk will record the vote.

13 There being one hundred fifteen votes in the
14 affirmative and none in the negative, the motion is
15 carried and the amendment is adopted.

16 Are there any further amendments?

17 The question now arises on the approval of
18 Committee Recommendation GP-9. Is there any discussion?

19 Are you ready for the question?

20 The Clerk will ring the quorum bell.

21 The question arises on the approval of Committee

1 Recommendation No. GP-9 as amended. A vote Aye is a vote
2 in favor of approval, and a vote No, a vote against.

3 Cast your votes.

4 Has every delegate voted?

5 Does any delegate desire to change his vote?

6 The Clerk will record the vote.

7 There being one hundred sixteen votes in the
8 affirmative and none in the negative, Committee Recommen-
9 dation GP-9 as amended is approved.

10 The next item on the agenda is a consideration
11 of Committee Recommendation GP-10. The Chair recognizes
12 Delegate Boyer.

13 DELEGATE BOYER: Mr. Chairman and ladies and
14 gentlemen of the Committee, I am sure by now you are
15 probably getting tired of seeing me up here. This GP-10
16 deals with impeachment procedures that your Committee on
17 General Provisions thought should be in the Constitution.

18 I think that as I understand there will
19 probably be some amendments suggested on this that we will
20 consider in due time, but for the time being historically
21 the origin of impeachment lies in the English parliamentary

1 procedure where the House of Commons had the power of
2 impeachment and the House of Lords conducted the trials.

3 Our suggested recommendation varies slightly
4 from that. We would have the House of Delegates be more
5 or less the indicting body and by a three-fifths vote of
6 the membership of the House, an impeachment could be
7 brought, but instead of having the Senate which would
8 correspond to the House of Lords in the English parlia-
9 mentary system, instead of having the Senate conduct the
10 trial, we would vary slightly from that and suggest that
11 a special tribunal of ten judges hear the trial and
12 conduct it.

13 There was some concern that perhaps there would
14 be a conflict if a judge, for instance, was up for
15 indictment, for impeachment, and the special tribunal
16 would be the judging body. The Committee considered that
17 objection of a trial of judges by other judges, but we
18 thought that was probably no more questionable than a
19 trial of the legislature by his fellow legislators. We
20 thought that the judges probably would be specialists
21 in their field and better able to conduct impartially

1 the trial in an ordinary judicial fashion and for that
2 reason, your Committee on Judicial Provision adopted the
3 draft and recommended to the Committee of the Whole that
4 the impeachment process be approved in the Constitution
5 as we have it now. We felt that there was a necessity
6 for the constitutional provision.

7 The U. S. Constitution parallels the English
8 practices, but I suggest again that we have varied
9 slightly from that and, again, we recommend that GP-10
10 be adopted by the Committee.

11 THE CHAIRMAN: Are there any questions of the
12 Committee Chairman?

13 Delegate Marion.

14 DELEGATE MARION: Delegate Boyer, is it fair
15 to interpret this recommendation to the extent that it
16 covers the impeachment of judges and their removal from
17 office under this provision as being supplementary to
18 the provisions of JB-1 which provided another specific
19 process for the removal of judges from office?

20 THE CHAIRMAN: Delegate Boyer.

21 DELEGATE BOYER: Yes, you are talking about the

1 Disability Commission. Yes, this would be a supplementary
2 proceeding, Delegate Marion.

3 THE CHAIRMAN: Any further questions?
4 Delegate Hanson.

5 DELEGATE HANSON: Delegate Boyer, would you
6 explain how your Committee views a trial for impeachment?
7 I mean what kind of a process is this? Is this a
8 judicial process or is it a legislative action or a
9 political action? Just what is a trial for impeachment
10 as your Committee sees it?

11 THE CHAIRMAN: Delegate Boyer.

12 DELEGATE BOYER: Well, we would certainly
13 hope that there would be no politics or political
14 retribution involved here. The House of Delegates would
15 have the sole power of impeachment. That is more or
16 less the grand jury proceedings, the indictment. If
17 by a three-fifths vote of the membership of the House
18 there was found to be justiciable reasons or equitable
19 reasons for the impeachment proceeding then it would be
20 turned over with the true bill of presentment to the
21 ten judges for the trial of the accused.

1 THE CHAIRMAN: Delegate Hanson.

2 DELEGATE HANSON: Isn't the history of
3 impeachment and trials of impeachment by legislative
4 bodies one of seeking to remove elected officials from
5 office when there have been no justiciable causes of action
6 against them in some instances and in some instances
7 perhaps there was, but this may go beyond that?

8 THE CHAIRMAN: Delegate Boyer.

9 DELEGATE BOYER: I would concede that you have
10 a good point there. Of course, if a public official has
11 been convicted of some heinous crime that in itself in
12 a court of law would subject him to removal from a court
13 office. The impeachment proceeding would be that perhaps
14 for some reason public official "A" has not been convicted
15 of a felonious crime, and this would be a supplementary
16 proceeding.

17 DELEGATE HANSON: Why does your Committee
18 argue that in such case this can be conducted better in
19 a tribunal of judges than before the Senate?

20 THE CHAIRMAN: You say "in such case". By
21 that you mean what?

1 DELEGATE HANSON: He said in cases of impeach-
2 ment and particularly in cases in which either no crime
3 as normally defined has been committed or at least no
4 conviction for an alleged crime can be obtained.

5 DELEGATE BOYER: We thought that the judges"
6 experience tended to permit them a high degree of
7 insulation from the issues of personality and that their
8 specialized training would probably allow them to
9 impartially conduct such proceedings if it ever became
10 necessary. I think this is highly improbable, but not
11 entirely impossible that the situation might arise.

12 THE CHAIRMAN: Any other questions?

13 Delegate Boyer, the Chair would like to ask a
14 question in view of the last question asked by Delegate
15 Hanson.

16 Isn't it true this section is limited to
17 impeachment in cases of serious crimes or serious
18 misconduct in office?

19 DELEGATE BOYER: Yes, sir.

20 THE CHAIRMAN: Delegate Bamberger?

21 DELEGATE BAMBERGER: Mr. Chairman, would the

1 House of Delegates have the power to impeach elected
2 officials who are officials of a county or a municipality?

3 THE CHAIRMAN: Delegate Boyer?

4 DELEGATE BOYER: I must confess that there is
5 probably a gap in here. The General Provisions recommen-
6 dation is silent on this point, and I think that one of
7 our learned delegates with whom I have discussed this matter
8 has an amendment that will plug up any loop hole that
9 might exist in this misinterpretation. I can assure you
10 that there will be an amendment coming that will take
11 care of local officials.

12 DELEGATE BAMBERGER: I asked the question
13 because of the ambiguity. On line 6 it talks about
14 elected officials. It doesn't confine it to either state
15 or lesser political subdivisions while on line 7 in
16 talking about other state or other officers, and I
17 presume by that it would mean appointed officers other
18 than judges, it is confined to officers of the state.

19 Then you get into an interpretation of what is
20 a state officer.

21 DELEGATE BOYER: I can assure you, and I

1 think your doubts and hesitations will probably be
2 removed when Delegate Grant Smith's recommendation for
3 an amendment -- I think this will clear the atmosphere
4 on that if there is any doubt at all.

5 THE CHAIRMAN: Any further questions?

6 Delegate Chabot.

7 DELEGATE CHABOT: Delegate Boyer, when the
8 case is sent to the special tribunal, the ten-judge
9 tribunal, will their function be limited to determining
10 whether or not the impeached official has committed a
11 crime of serious misconduct or will they also have the
12 power to determine whether or not this act was serious
13 enough to warrant removing the person from office?

14 DELEGATE BOYER: The impeachment proceedings
15 would be merely the removal of a person from office.
16 This would not eliminate the criminal liability from them
17 for future prosecution for any violation of the criminal
18 code. The mere purpose of impeachment is to remove from
19 office a person by impeachment proceedings.

20 DELEGATE BOTHE: I refer to the statement on
21 line 7, any other state officers who may be designated

1 by law. How do they get designated by law? Does the
2 General Assembly decide that a particular officer ought
3 to be impeached and then pass a law or do they at the time
4 they create his office say that it is impeachable or
5 just what kind of an officer is intended to be included
6 there?

7 DELEGATE BOYER: This is parallel to Delegate
8 Bamberger's question, and I concede that there might be a
9 misunderstanding of who is or who is not a state officer.
10 The intention is to remove from public office anybody who
11 may be guilty of a reason to be removed and Delegate
12 Grant has, I know, an amendment that I hope will clear
13 up a state officer who may be delegated by law.

14 THE CHAIRMAN: Delegate Bothe.

15 DELEGATE BOTHE: I think you misunderstand my
16 question. It is not the same as Delegate Bamberger's.

17 As I read this section it appears that the
18 words "designated by law" could mean either that the
19 General Assembly decides by law that a particular officer
20 ought to be impeached or that a particular office is
21 subject to impeachment?

1 THE CHAIRMAN: Delegate Boyer.

2 DELEGATE BOYER: The General Assembly could
3 not in personalities pick on this official or that
4 official. They would have to take a catalogue group
5 and state this is an officer designated by law. They
6 couldn't take one county commissioner and not another.
7 They would have to include all commissioners.

8 THE CHAIRMAN: Churchill Murray.

9 DELEGATE CHURCHILL MURRAY: It says trial by
10 ten judges. Who designates the judges?

11 THE CHAIRMAN: Delegate Boyer.

12 DELEGATE BOYER: The Chief Judge of the Court
13 of Appeals. He seemed to be the designating officer of
14 all the lower courts. This would be a special tribunal
15 set up and I cannot conceive of any other person with the
16 authority in the state to make such designation except
17 the Chief Judge of the Court of Appeals.

18 DELEGATE CHURCHILL MURRAY: Do you think it
19 desirable to spell that out?

20 THE CHAIRMAN: I am not clear. Will you state
21 your question again?

1 DELEGATE CHURCHILL MURRAY: Do you think it
2 desirable --

3 THE CHAIRMAN: Your prior question? Your
4 previous question.

5 DELEGATE CHURCHILL MURRAY: My previous
6 question was who would designate the ten judges to
7 sit at such a tribunal.

8 THE CHAIRMAN: Isn't that answered by the
9 sentence beginning in line 12?

10 DELEGATE CHURCHILL MURRAY: I am sorry,
11 appointed by the Court of Appeals.

12 THE CHAIRMAN: Any further questions?

13 Delegate Burdette.

14 DELEGATE BURDETTE: Mr. Chairman, since the
15 Chairman of the Committee has just answered that to mean
16 the Chief Judge, I should like to ask specifically if it
17 does not mean appointment by the Bench as such, the Court
18 of Appeals?

19 THE CHAIRMAN: Delegate Boyer.

20 DELEGATE BOYER: Well, perhaps I was shooting
21 from the hip on that. I think the recommendation of

1 the Committee does say the Court of Appeals. It does not
2 say the Chief Judge. This would necessarily then be by
3 en banc court of the Court of Appeals.

4 THE CHAIRMAN: Delegate Bradshaw.

5 DELEGATE BRADSHAW: I wish to announce the
6 presence in the gallery of the Chairman of the Democratic
7 Committee of Montgomery County.

8 (Applause)

9 THE CHAIRMAN: Delegate Marion.

10 DELEGATE MARION: Delegate Boyer, this refers
11 to cases of serious crimes or serious misconduct in
12 office. Without further spelling it out or stating how
13 these crimes might be defined, by whom do you contemplate
14 the defining of those terms should somebody be faced with
15 an impeachment under this section?

16 THE CHAIRMAN: Delegate Boyer.

17 DELEGATE BOYER: The definition of those terms
18 would have to lie and rest with the House of Delegates
19 who shall have the sole power of impeachment to do thus
20 and so in face of serious crimes.

21 THE CHAIRMAN: Delegate Marion.

1 DELEGATE MARION: Would you contemplate the
2 ten-judge tribunals which try the impeachment as having
3 the power to determine whether or not the impeachment,
4 which is the indictment, in fact, charges a serious crime
5 or serious misconduct in office and if they have the
6 authority to try that, is there further recourse to the
7 Court of Appeals to determine whether or not that
8 determination has been correctly made, either by the
9 House of Delegates or by this ten-judge tribunal?

10 THE CHAIRMAN: Delegate Boyer.

11 DELEGATE BOYER: It is my understanding if
12 there should be an impeachment proceeding and the special
13 tribunal should go along with the House of Delegates that
14 there has been a serious crime committed, that I don't
15 know to whom you would appeal from that decision of the
16 special tribunal.

17 THE CHAIRMAN: Delegate Marion.

18 DELEGATE MARION: So whatever the House of
19 Delegates chose to categorize as a serious crime or
20 serious misconduct in office for a particular situation
21 would be binding upon the particular tribunal or the House

1 of Delegates?

2 THE CHAIRMAN: Delegate Boyer.

3 DELEGATE BOYER: No. The House of Delegates
4 would be the accusatory body. Then the ten judges
5 with their special training and expertise would determine
6 whether this should go to trial.

7 THE CHAIRMAN: Delegate Marion.

8 DELEGATE MARION: I am not sure we are talking
9 about exactly the same thing.

10 DELEGATE BOYER: I am trying to answer.

11 DELEGATE MARION: I understand the tribunal of
12 ten judges would determine if there are facts to support
13 the charge. Could they also determine if the charge was
14 a valid charge and whether the indictment charges a
15 serious crime or a serious misconduct in office?

16 THE CHAIRMAN: Delegate Boyer.

17 DELEGATE BOYER: It is my thought that a
18 special tribunal would be a de novo court that would hear
19 the proceedings from the original inception. If they
20 thought it was not a serious charge, they would probably
21 dismiss it.

1 THE CHAIRMAN: Any further questions?

2 Delegate Beatrice Miller.

3 DELEGATE BEATRICE MILLER: I notice in the
4 present Constitution there is no provision for the
5 tribunal. What was the thinking of your Committee in
6 adding this section to the section on impeachment?

7 THE CHAIRMAN: I couldn't hear the last. To
8 the section on what?

9 DELEGATE BEATRICE MILLER: On impeachment.
10 Why was the tribunal provided for when it was not in the
11 Constitution?

12 THE CHAIRMAN: Delegate Boyer.

13 DELEGATE BOYER: We felt that this special
14 tribunal -- I don't know how else to say it except to
15 repeat that their expertise and experience and the
16 machinery they have had would be more effective and they
17 would be able to delineate the right from wrong on whether
18 or not there had been a serious charge and whether or
19 not there had been any guilt involved. The Committee
20 felt, I felt, that it was better to have the judges
21 conduct the actual trial rather than the Senate.

1 THE CHAIRMAN: Delegate Scanlan.

2 DELEGATE SCANLAN: The model Constitution
3 recommends a special tribunal much as your Committee
4 has. In doing so, one of the reasons they give is that
5 having the special tribunal would remove the special
6 impeachments from the legislature and remove the procedure
7 from partisan politics. Was that one of the reasons why
8 you took into account naming a special tribunal?

9 DELEGATE BOYER: Thanks very much, Delegate
10 Scanlan. I couldn't have said it better myself.

11 THE CHAIRMAN: Delegate Willoner.

12 DELEGATE WILLONER: You confused me when you
13 referred to the Court of Appeals choosing the ten judges
14 by sitting en banc. Do you mean the majority of the Court
15 of Appeals as four out of seven or a majority of the
16 quorum that sits?

17 THE CHAIRMAN: Delegate Boyer.

18 DELEGATE BOYER: I am advised that the House
19 of Delegates in their impeachment proceeding would have
20 to have a three-fifths vote and this would carry over to
21 the ten-judge tribunal.

1 DELEGATE WILLONER: I am referring to the
2 selection process of the ten judges that would decide the
3 case for lack of a better word.

4 THE CHAIRMAN: Delegate Boyer, the question
5 Delegate Willoner asks is what number of judges in the
6 Court of Appeals is necessary to concur in the appoint-
7 ment of the special tribunal of ten? A majority of the
8 quorum or a majority of the whole court?

9 DELEGATE BOYER: The recommendation is silent
10 on this, but I would imagine like all other decisions of
11 the Court of Appeals the majority would prevail.

12 THE CHAIRMAN: Delegate Willoner.

13 DELEGATE WILLONER: Of a quorum.

14 THE CHAIRMAN: Delegate Bamberger.

15 DELEGATE BAMBERGER: Mr. Chairman, I just rise
16 because I think we have become confused. My recollection
17 from the judiciary article is that this always requires a
18 concurrence of four judges for any particular decision.
19 Even when they sit as a panel of five, a majority of
20 three is not sufficient to act and that it would
21 require a majority of four. I would suggest that the

1 answer to Delegate Willoner is that it requires a con-
2 currence of four of the seven judges that would appoint
3 the ten that would serve on the impeachment panel.

4 DELEGATE BOYER: On reflection, I must concur
5 with you. Thanks for your assistance, Delegate
6 Bamberger. This is, it is true, my recollection of the
7 judicial article. I think I got stampeded into giving an
8 erroneous answer.

9 THE CHAIRMAN: Delegate Boyles.

10 DELEGATE BOYLES: Delegate Boyer, I take it the
11 impeachment by the House of Delegates makes a trial by
12 the Court of Appeals mandatory?

13 DELEGATE BOYER: No, there is no trial by the
14 Court of Appeals. The Court of Appeals would appoint
15 a special tribunal of ten judges.

16 DELEGATE BOYLES: Excuse me. By the judges
17 which the Court of Appeals appoints?

18 DELEGATE BOYER: Yes, after the House of
19 Delegates by a three-fifths vote makes the indictment,
20 then it is mandatory that the special tribunal must conduct
21 a hearing on it.

1 THE CHAIRMAN: Any further questions of the
2 Committee Chairman?

3 Delegate Hanson.

4 DELEGATE HANSON: Chairman Boyer, you said one
5 of the reasons for having a special tribunal was to remove
6 the partisan atmosphere which might surround a trial in
7 the Senate. In that line, how does one remove the political
8 connotations of the removal from office of the Governor?

9 DELEGATE BOYER: We would certainly hope that
10 if unfortunately a Governor should be so impetuous as
11 being guilty of some violation, it wouldn't make any
12 difference whether he be democrat or republican or
13 vegetarian, that he would be tried on the merits of his
14 case and not on the political party.

15 DELEGATE HANSON: Is not removing a Governor
16 from office an act of the greatest political magnitude,
17 regardless of his party?

18 DELEGATE BOYER: Yes. When I am talking about
19 politics, I am talking about partisan politics.

20 DELEGATE HANSON: Would you agree with me that
21 there is a political connotation of the highest order in

1 a trial for impeachment and in a conviction of impeachment?

2 DELEGATE BOYER: I am always glad to agree
3 with you, Delegate Hanson.

4 THE CHAIRMAN: Delegate Hanson.

5 DELEGATE HANSON: Why should those who are in
6 power remove a Governor from office for such a vague
7 offence as a serious crime or serious misconduct in
8 office, why should this group not have to stand before
9 the people of the state to account for the action that it
10 took?

11 THE CHAIRMAN: Delegate Boyer.

12 DELEGATE BOYER: I think President Truman had
13 a sign on his desk: "The buck stops here." The tribunal
14 would be the place where the buck must stop. They
15 would be the sole arbitrators to decide whether or not
16 John Brown is guilty or not.

17 THE CHAIRMAN: Delegate Hanson.

18 DELEGATE HANSON: I don't think you quite
19 answered my question. What I am getting at is why should
20 a court which will not stand for election in the next
21 two or four years and perhaps some of whose members will

1 not stand for reelection for eight years following a
2 trial for impeachment be the appropriate body to undertake
3 an act of such great political magnitude as the removal
4 from office of the incumbent Governor? Why should the
5 people not be able to hold accountable those who remove the
6 chief executive of the state from office?

7 THE CHAIRMAN: Delegate Boyer.

8 DELEGATE BOYER: I think this is one of the
9 healthy aspects of the situation. I cannot help but
10 divorce myself completely from any partisan implications
11 involving whether or not a man is guilty. I think it
12 is healthy, the fact that someone who does not stand for
13 election in either two or four years, that these would
14 be the appropriate ones to hear the proceeding. They
15 are not under any political pressure.

16 THE CHAIRMAN: Delegate Hanson, I think you
17 would probably know better than the Chair that this question
18 of leaving impeachment to the Senate was probably the most
19 heated debate in the Federal Constitutional Convention of
20 1787. The vote passed by one. You would probably recall
21 whether that was true.

1 DELEGATE HANSON: I don't recall it directly,
2 Mr. Chairman, but I would only say that the one who made
3 up that majority must have been one of the wisest men at
4 the Convention.

5 THE CHAIRMAN: Perhaps by the name of Hanson.
6 Delegate Grant.

7 DELEGATE GRANT: That was the comment I was
8 about to make.

9 THE CHAIRMAN: The political action is taken care
10 of in the bill of impeachment. Whether or not the bill
11 is true is something that the entire body has to determine.

12 Are there any further questions of the Committee
13 Chairman?

14 Delegate Malkus.

15 DELEGATE MALKUS: Mr. Chairman, why should
16 not the Senate have some say in the impeachment
17 proceedings?

18 THE CHAIRMAN: Delegate Boyer.

19 DELEGATE BOYER: We have considered this and
20 as I have indicated, the theory or the origin of impeach-
21 ment has evolved to us from English parliamentary system

1 where the House of Lords was the tryer and the House of
2 Commons decided whether the cause for impeachment existed.
3 Your Committee has desired that the representatives of
4 the people should be the accusing body and that the
5 trial itself, the tryer of the facts, should be judges
6 who perhaps by their temperament, by their experience, by
7 their expertise, might be far removed from the political
8 arena and not under the political pressures of the time
9 and could perhaps more impartially and with more judicial
10 knowledge try the situation.

11 THE CHAIRMAN: Delegate Malkus.

12 DELEGATE MALKUS: Mr. Chairman, are you saying
13 then that the proceedings brought by the House of
14 Delegates would in no way be affected by politics?

15 THE CHAIRMAN: Delegate Boyer.

16 DELEGATE BOYER: I can't say that, sir. I
17 couldn't say anything which would or would not be
18 affected by politics.

19 THE CHAIRMAN: Delegate Malkus.

20 DELEGATE MALKUS: My third question, Mr.
21 President, or Mr. Chairman, rather, are you not taking

1 some of the legislative power away by these proceedings?

2 THE CHAIRMAN: Delegate Boyer.

3 DELEGATE BOYER: No, I can't agree that it is
4 necessarily depriving any legislative power. Some may
5 look on it as that, Senator, but our intent was to, if
6 there ever should be any impeachment proceeding, which is
7 remote, but possible, that the accused should perhaps
8 receive the most unpolitical trial by people who were
9 experienced.

10 THE CHAIRMAN: Delegate Malkus.

11 DELEGATE MALKUS: Mr. Chairman, do you not
12 think that the Maryland Senate should have an equal
13 voice in bringing these charges?

14 THE CHAIRMAN: Delegate Boyer.

15 DELEGATE BOYER: The Committee recommendation
16 was that the charges should be brought by the House of
17 Delegates and tried by the special tribunal.

18 THE CHAIRMAN: Delegate Malkus.

19 DELEGATE MALKUS: You are shooting again from
20 the hip.

21 THE CHAIRMAN: Delegate Boyer.

1 DELEGATE BOYER: That is Committee Recommendation
2 No. GP-10. How I feel about it might be a different
3 situation. I am reporting to you the general recommen-
4 dations from the General Provisions Committee.

5 THE CHAIRMAN: Delegate Malkus.

6 DELEGATE MALKUS: Now, Mr. Chairman, how do
7 you feel personally?

8 DELEGATE BOYER: As a loyal committee chairman,
9 I am going along with the Committee recommendation, sir.

10 THE CHAIRMAN: Delegate Malkus.

11 DELEGATE MALKUS: Mr. President, can I make an
12 observation?

13 THE CHAIRMAN: I suppose we can accord you that
14 privilege.

15 DELEGATE MALKUS: You know, sir, I have been
16 very quiet recently.

17 DELEGATE BOYER: Fantastic.

18 DELEGATE MALKUS: The back benchers are giving
19 me a hard time, but I would like to say this. In the
20 future when an ambitious man from the House of Delegates
21 wants to get in the Senate seat across the hall, he has

1 got the door wide open for him now.

2 THE CHAIRMAN: Any further questions of the
3 Committee Chairman?

4 Apparently there are no further questions.

5 If Delegate Boyer will return to his seat,
6 we will take up Committee Recommendation GP-10.

7 While we are waiting for that, the Chair
8 recognizes Delegate Darby.

9 DELEGATE DARBY: Mr. Chairman and fellow
10 Delegates, I would like to ask the Committee to extent
11 their usual warm welcome to some relatives of mine, my
12 sister and brother-in-law, Mr. and Mrs. Charles Brooks, and
13 my nephew, Charles Brooks, Jr., in the gallery facing the
14 President.

15 (Applause)
16
17
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21

1 THE CHAIRMAN: Delegate Hanson, do you desire
2 to offer your Amendment C?

3 For what purpose does Delegate Scanlan rise?

4 DELEGATE SCANLAN: I would like the Assembly to
5 extend its warm regards to Miss Marie Garver and to Mr.
6 Gerald Goldberg of Montgomery County and a member of the
7 Town Council of the Town of Somerset who are in the gallery
8 opposite the President. (Applause.)

9 THE CHAIRMAN: Delegate Beatrice Miller.

10 DELEGATE B. MILLER: I would ask the Assembly
11 to welcome two other guests from Montgomery County, Mr.
12 Howard Koss and Miss Deborah Koss, the husband and daughter
13 of Delegate Helen Koss who are also visiting tonight.
14 They are in the gallery to your rear, sir. (Applause.)

15 THE CHAIRMAN: Delegate Churchill Murray.

16 DELEGATE E. MURRAY: Mr. Chairman and fellow
17 Delegates: I would like to announce the presence in the
18 balcony of Mr. Ulrich, the husband of our fellow Delegate.
19 (Applause.)

20 THE CHAIRMAN: Delegate Hanson, do you desire
21 to offer your Amendment C?

1 DELEGATE HANSON: Yes, but I would like to
2 yield to Delegate Hopkins for an explanation of the amend-
3 ment.

4 THE CHAIRMAN: Very well.

5 The pages will please distribute Amendment C.

6 This will be Amendment No. 1.

7 The Clerk will read the amendment.

8 MR. QUILLEN: Amendment No. 1 to Committee
9 Recommendation No. GP-10 by Delegates Hanson, Hopkins,
10 Bamberger and Gallagher:

11 On page 1 strike out all of lines 13 through 17,
12 inclusive, and insert in lieu thereof the following: "tried
13 by the Senate. The concurrence of three-fifths of all the
14 members of the Senate shall be required to convict."

15 THE CHAIRMAN: The amendment is submitted by
16 Delegates Hanson and Hopkins and seconded by Delegates
17 Bamberger and Gallagher.

18 The Chair recognizes Delegate Hopkins.

19 DELEGATE HOPKINS: Mr. Chairman and fellow
20 Delegates: It is not our intention to spend a great deal
21 of time on this but I think as the question period has

1 already brought out there is one issue upon which we
2 should perhaps specifically take a vote. This matter of
3 impeachment was also discussed by the members of the
4 Legislative Committee and I am for some reason a spokes-
5 man for some of the delegates who were not happy about
6 this article. We did talk about it because we thought
7 at one point our committee would have to draft this.
8 Specifically, after the impeachment by the House, the
9 question is where the trial should be and the majority
10 report puts it in the hands of ten judges as you have just
11 heard it explained. We propose that we put it back in the
12 hands of the Senate.

13 There may be some question as to whether im-
14 peachment should be in the Constitution at all. It is a
15 seldom used remedy in democracy. However, if it is going
16 to be in there at all, it is an extraordinary procedure
17 and we feel that under these circumstances it should be
18 left completely in the hands of the directly elected rep-
19 resentatives of the people. Therefore, the Senate, we
20 would go along certainly with the three-fifths vote which
21 was recommended. I wish to call your attention to the

1 fact that there is no other State in the Union at the
2 moment that follows the majority report suggestion --
3 actually in 48 States the Senate now is the trying body,
4 that is the body in which the trial takes place. And one
5 minor thing which I think also should be pointed out and
6 that is that there is the possibility that some complications
7 could arise when the courts must allow ten judges to sit
8 in a special trial, both the tying up of the whole court
9 system and the ineligibility of these judges to serve in
10 subsequent trials of the same official for the same
11 offense. However, overriding and our main argument is the
12 fact that this trial should be in the hands of the elected
13 representatives of the people and if you feel as we do,
14 then I urge your support of this amendment.

15 THE CHAIRMAN: Delegate Boyer.

16 DELEGATE BOYER: Mr. Chairman, this is, of course,
17 in direct conflict with the committee recommendation and
18 it seems to center on the issue of who should be the
19 trier of the facts and the committee feels that while the
20 initiation and trial of impeachments have been tradi-
21 tionally the function of the Legislature, that actually

1 the concept of trials of impeachment of judges is by no
2 means anything new.

3 The provision of the United States Constitution
4 with regard to impeachment was passed by the Constitutional
5 Convention after very serious debate. We have had many
6 quotes from very learned Americans, some not so learned,
7 over this convention thing and I would like to quote you
8 one thing that Alexander Hamilton had to say on this par-
9 ticular subject. There will always be the greatest danger
10 that the decision will be regulated more by the compara-
11 tive strength of the parties than by a real demonstration
12 of innocence or guilt.

13 I think this probably sums it up better than I
14 could, that a trial by the judges might remove it from
15 the political arena more than if we had a trial by the
16 Senate which may be heavily weighted one way than the
17 other and I know not and care not but the principal pur-
18 pose of the trial by judges is to lessen the likelihood
19 of the results being determined by political strength
20 and for that reason and by reason of removing it from the
21 political arena, we would seriously urge you to vote for

1 the general provision recommendation and reject this
2 amendment.

3 THE CHAIRMAN: Any further discussion?

4 Delegate Hanson.

5 DELEGATE HANSON: Mr. Chairman, I think to place
6 a trial for impeachment in the hands of the judiciary,
7 although the judiciary is normally conceded to be the
8 place to try cases,^{is} the most unwise decision; an impeach-
9 ment trial, if you look at the history of impeachment in
10 the various states or the Federal impeachment trials, is
11 uniquely a political proceeding. The charges or condi-
12 tions which may cause an impeachment to be brought are
13 normally political. They are beyond the normal reach of
14 the law. A man cannot be touched in some instances by
15 the normal reach of the law and consequently the lower
16 house must feel that his conduct is so grievous against
17 the public interest that he should be tried on charges
18 of impeachment.

19 If this goes before the court, it will still be
20 a political trial. There will be tremendous pressure
21 brought on the Court of Appeals by the -- if it is a

1 governor, for example, by the partisans of the governor
2 to make sure that a tribunal is selected that will be
3 favorable to his cause and the House will certainly want
4 to see that a tribunal is selected that will be favorable
5 to its cause and it will put the Court of Appeals, it
6 seems to me, under the most unfortunate kind of political
7 pressure from the two contending sides.

8 The trial will not be less political in the
9 true sense of that term solely because it is held before
10 ten judges than it would be if it were held before the
11 Senate of the State and finally be a political trial,
12 being a case in which the judgment must be by the nature
13 of the case a political judgment to remove a high elected
14 official from office, it seems to me, then, that the
15 people of the State should be the place where the buck
16 stops and if they feel that this was a good decision by
17 the body, they have a way to demonstrate that they believe
18 it to be and if they believe it to be an unwise decision,
19 they have through the election process a means for
20 demonstrating that they believe it was an unwise decision.
21 If a governor or a lieutenant governor or comptroller or

1 attorney general or another impeachable officer has com-
2 mitted a serious offense or is alleged to commit a serious
3 offense, then he should be tried in a court of law as
4 any other citizen would be tried for committing a crime.
5 If he has only done something for which he can be impeached
6 then he should be tried politically.

7 THE CHAIRMAN: Any other delegate desire to
8 speak in opposition to the amendment?

9 Delegate Winslow.

10 DELEGATE WINSLOW: Mr. Chairman, it seems to me
11 that my Brother Delegate Hanson -- Mr. Chairman, it seems
12 to me that my Brother Delegate Hanson has forgotten some
13 of his history.

14 One of the ills of impeachment as it has been
15 known in this country in one case, in Oklahoma, has
16 indicated that legislatures both lower house and senate
17 have been controlled not by the mere politics but by the
18 most terrible partisan politics. This was what was true
19 in the most famous impeachment trial in America, that of
20 President Johnson, and it was only because a lawyer
21 appeared before the United States Senate and insisted that

1 they could not convict President Johnson save in a
2 judicial sense, that the case must be decided as if the
3 Senate were a court. There is a confusion here, it
4 seems to me, in this debate as to what the purpose of
5 this trial is, this is not a trial as Delegate Hanson
6 suggested, which is to replace an action by the court.
7 This is a trial to determine whether an individual can be
8 removed from office. He is still subject to action by
9 a court if accusation be made against him according to
10 law.

11 By all means, it seems to me we should remove
12 the trial of impeachment cases from the political atmos-
13 phere of the Senate and put it where it belongs in a
14 commission of judges.

15 THE CHAIRMAN: Any further discussion?

16 Delegate Gill.

17 DELEGATE GILL: Just a matter of statistics,
18 Mr. Chairman and fellow delegates. The 1957 report of
19 the Citizens Conference on State Legislatures: Impeach-
20 ment and trial of governors: Of the power of impeachment,
21 49 empowered the legislature to impeach the governor. Of

1 the 49, 47 required the house to bring the impeachment,
2 one required the senate to bring impeachment and one is
3 unicameral. The court of an impeachment. Forth-six
4 states require the senate to sit as a court of impeach-
5 ment; one requires the state supreme court to sit as a
6 court of impeachment, and one requires that its governor
7 be tried by a special commission of eminent jurors to be
8 elected by the senate.

9 The model constitution also recommends the
10 legislature trial.

11 THE CHAIRMAN: Delegate Scanlan.

12 DELEGATE SCANLAN: I would prefer Professor
13 Winslow's history to Delegate Gill's statistics. The
14 history of impeachment in this country has been one pri-
15 marily of misuse. Where it has been used for the most
16 part it has been subject to gross abuse for purely partisan
17 advantages and the trial of Andrew Johnson illustrates it,
18 and the trial of the five governors in the reconstruction
19 area illustrates it and in each one of those cases it was
20 the senate that was the guilty body. I suggest that we
21 strike out with a few other states and put the special

1 tribunal that will try impeachment cases in an indepedent
2 body, whether it be our own Court of Appeals, that would
3 satisfy me, but I think a special tribunal as proposed by
4 the Constitution is sufficient.

5 Let us try something new where the old hasn't
6 worked whenever it has been invoked.

7 THE CHAIRMAN: Any other delegate desire to
8 speak in favor of the amendment?

9 Any delegate opposed?

10 Delegate Marion.

11 DELEGATE MARION: Impeachment has been a pretty
12 unsatisfactory method to get rid of someone who holds
13 public office. It is for that reason that the State of
14 California pioneered the system for the removal of judges
15 which has been adopted by several other states, including
16 the State of Maryland. It was because impeachment was
17 such a poor remedy, that process is gaining favor in many
18 states and it is being considered now by the Congress of
19 the United States.

20 Picture, if you will, the typical impeachment
21 trial in the senate as it has occurred on only a few

1 occasions in the history of the United States in the
2 Senate of the United States. There have been something
3 like eight or nine impeachment trials in the Senate.
4 They have lasted an average of 17 days, during which time
5 they have tied up the entire work of the Senate. Statis-
6 tics indicate at many times during a trial before the
7 Senate, as few as three members of the Senate have been
8 present on the floor giving attention to the process of
9 the trial of a public officer whose removal from office
10 is at stake. It just is not a satisfactory method.

11 I don't have any great love for the method
12 proposed by the committee but I think it is better than
13 a trial by the Senate.

14 THE CHAIRMAN: Delegate Beatrice Miller.

15 DELEGATE B. MILLER: Mr. Chairman and fellow
16 delegates: There are two parts of this proposal that
17 bother me very much, one is that if the committee's pro-
18 vision is allowed to stand, then the very same judges who
19 might be involved in the conviction of a man for impeach-
20 ment might then also be involved in his conviction for
21 criminal prosecution and I think that this is a very

1 unsavory method of proceeding.

2 Secondly, I would point out that we have built
3 in a system in this Constitution, a judicial system where
4 there is very little review by the people and if you add
5 to that, if you take away the right of the people as it
6 exists in impeachment by leaving it in the General Assembly,
7 then you are again removing one more control by the people
8 and putting it into this locked judiciary; I urge you not
9 to do this, to leave the impeachment procedure as it has
10 been in the history of Maryland where it has done no harm
11 and where it has proceeded very well.

12 THE CHAIRMAN: Delegate Marvin Smith.

13 DELEGATE M. SMITH: May I suggest to Delegate
14 Miller, I don't know what judges in her part of the State
15 do, but in my part of the State when a judge has once
16 heard a case, he doesn't sit on that case again.

17 THE CHAIRMAN: Any other discussion?

18 Delegate Bamberger.

19 DELEGATE BAMBERGER: I think the discussion has
20 pointed up a number of problems and in response to Dele-
21 gate Smith, I think one of the points that is made by

1 Delegate Miller is that if the man, if the officer has
2 been tried for the crime, which is the cause also for
3 impeachment, and had appealed that case to the Court of
4 Appeals, then while those judges certainly would not
5 also sit on the impeachment panel, at least a majority
6 of those judges have the power to select the people who
7 will sit on the panel.

8 That, I must say, does bother me. The fact
9 that the judges of the Court of Appeals who will have
10 already heard evidence and who may have already heard
11 evidence in a criminal trial of the case will at least
12 have the power to select those judges who will sit on the
13 judicial tribunal. I rise again to speak in favor of
14 tradition and urge that we reject the committee's proposal
15 and adopt the amendment.

16 THE CHAIRMAN: Delegate Weidemeyer.

17 DELEGATE WEIDEMEYER: Mr. President, I rise to
18 inquire from the Chair is there any relief for the poor
19 delegate who wants to vote instead of listening to debate?
20 (Laughter.)

21 THE CHAIRMAN: Are you ready for the question?

1 (Cries of Question.)

2 THE CHAIRMAN: Delegate Pullen.

3 DELEGATE PULLEN: Mr. Chairman, as a member of
4 the committee, I would like to support the committee's
5 proposal.

6 I have been sitting here tonight in a benign
7 good humor but with a considerable degree of ennui except
8 when Mr. Scanlan joined the confederacy and I move to ask
9 you on the privilege of 30 years' friendship upon what
10 meat do these incarcerated Caesars feed that they can ask
11 questions ad infinitum, ad nauseam and I am limited to two?
12 (Laughter and applause.)

13 THE CHAIRMAN: Are you ready for the question?

14 The Clerk will ring the quorum bell.

15 The question arises upon the adoption of Amend-
16 ment No. 1.

17 A vote Aye is a vote in favor of the amendment.

18 A vote No is a vote against.

19 Cast your votes.

20 Has every delegate voted.

21 Did every delegate vote?

1 Does any delegate desire to change his vote?

2 The Clerk will record the vote.

3 There being 44 votes in the affirmative and 77
4 in the negative, the motion is lost and the amendment is
5 rejected.

6 Delegate Grant, do you desire to offer your
7 Amendment A?

8 DELEGATE GRANT: Yes, I do.

9 THE CHAIRMAN: Pages will please distribute the
10 Amendment A. The amendment offered this afternoon by
11 Delegate James to Committee Recommendation GP-8 has been
12 distributed and it is Amendment No. 7. It has already
13 been acted upon.

14 This will be Amendment No. 2.

15 The Clerk will read the amendment.

16 MR. QUILLEN: Amendment No. 2 to Committee
17 Recommendation No. GP-10 by Delegate Grant:

18 On page 1 of the recommendation following line 25
19 add this new section:

20 "Section _____. Removal of Officers

21 Except as otherwise provided in this Constitution

1 the General Assembly shall provide by law for investigation
2 of the misconduct in office or incompetency of any officer
3 and, subject to judicial review, for the removal for good
4 cause of any officer who is investigated, and for the
5 appointment of a successor of the same political party to
6 fill the remainder of the term of office of the removed
7 officer."

8 THE CHAIRMAN: The amendment is submitted by
9 Delegate Grant, is there a second?

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1 THE PRESIDENT: The amendment having been
2 seconded, the Chair recognizes Delegate Grant.

3 DELEGATE GRANT: The first thing I want to do is
4 to say what this amendment does not do. It does not cover
5 the situation of the Governor of the Lieutenant Governor
6 who are already provided for by a disability clause.

7 It does not cover the members of the judiciary
8 who are provided for by a Judiciary Commission.

9 It does not cover the members of the legislature
10 because the legislature has the power to discipline and/or
11 expel its members.

12 However, there is a hiatus that exists in the
13 Constitution. It existed partially in the old Constitution
14 and it exists in the new Constitution to a far greater
15 extent. We have provided in the new Constitution already
16 for the offices of Comptroller, Attorney General and
17 States Attorney. It also anticipated there will be
18 additional elective offices. However, in the old
19 Constitution there was a provision for the removal of
20 officers:

21 "Whenever during the recess of the Legislature

1 charges shall be preferred to the Governor against the
2 Comptroller or Treasurer for incompetency, malfeasance
3 in office, willful neglect of duty, or misappropriation of
4 the funds of the State, it shall be the duty of the Governor
5 forthwith to notify the party so charged, and fix a day for
6 a hearing of said charges; and if, from the evidence taken,
7 under oath, on said hearing before the Governor, the said
8 allegations shall be sustained, it shall be the duty of
9 the Governor to remove said offending officer, and appoint
10 another in his place, who shall hold the office for the
11 unexpired term of the officer so removed."

12 That is section 6 of Article 6 of the present
13 Constitution.

14 It also takes care of the Attorney General in
15 the following words: "Shall be subject to removal for
16 incompetency, willful neglect of duty or misdemeanor in office
17 on conviction in a court of law."

18 It takes care of the removal of the States
19 Attorneys for incompetency. The Attorney General was
20 in section 1 of the old Constitution, article 5, and in
21 section 7 of the old Constitution.

1 The States Attorneys were dealt with as follows:

2 "There shall be an Attorney for the State in
3 each county, and the City of Baltimore, to be styled 'The
4 State's Attorney,' who shall be elected by the voters
5 thereof, respectively, on the Tuesday next after the first
6 Monday of November, in the year, nineteen hundred and
7 fifty-eight, and on the same day every fourth year thereafter;
8 and shall hold his office for four years from the first
9 Monday in January next ensuing his election, and until his
10 successor shall be elected and qualified; and shall be
11 re-eligible thereto, and be subject to removal therefrom,
12 for incompetency, willful neglect of duty, or misdemeanor
13 in office, on conviction in a Court of Law, or by a vote
14 of two-thirds of the Senate, on the recommendation of
15 the Attorney-General."

16 Also there is a provision in the old Constitution
17 which does not exist in the new Constitution for the
18 removal of a civil officer. It says " -- and may remove
19 for incompetency, or misconduct, all civil officers who
20 received appointment from the executive for a term of years."

21 Now, a few weeks ago I circulated a memorandum

1 concerning this amendment which I am offering essentially:

2 "If the organic law of a government is silent
3 as to the mode of removal of an official, the official
4 must be deposed as provided by a fundamental law. Where the
5 Constitution provides a mode for removal of officers,
6 that mode is exclusive. Ordinarily the legislature cannot
7 provide for the removal of officers protected by the
8 Constitution.", which in this case means that the legislature
9 could not provide for the removal of the Comptroller or
10 Attorney General since they are provided in the
11 Constitution.

12 "Statutes providing for the removal of an
13 officer are strictly construed.

14 "The power to remove a public officer is an
15 incident of the sovereign power. The power of removal
16 in England, at common law, resided with the King. In the
17 United States the power rests with the people. They may
18 bestow this power on the executive or the legislature or
19 the judiciary.

20 "The Governor has no inherent power to remove
21 an official." -- as Governors have found out to their

1 sorrow, particularly in the days before they had a
2 Judicial Disability Commission. -- "However, the power to
3 appoint carries with it, as an incident, the power to remove
4 if no definite term is fixed."

5 So there is an implied power that the Governor
6 can remove an official that he appoints. However, when
7 a definite term of office is fixed, the power to appoint
8 does not carry with it as an incident of the power of
9 appointment the power to remove. Now, when the
10 Constitution provides that an officer may be removed at
11 the pleasure of the appointing officer, the officer must
12 be removed despite a definite term, so if it is provided
13 in the Constitution that the appointing officer can remove
14 the officer at pleasure, as is done in this Constitution
15 for the heads of the executive departments, then he does
16 have the power to remove.

17 Now, there is nothing in any of the county
18 charters providing for either impeachment or removal
19 except in one or two isolated instances.

20 Removal from public office is very definite --
21 deals in very definite terms. The memorandum which I

1 circulated included the definition of two of those terms.

2 "Misconduct in office: includes willful malfeas-
3 ance, misfeasance, nonfeasance, and any act involving moral
4 turpitude or contrary to justice, honesty, principles or
5 good morals, if performed by virtue of or under the
6 authority of the office."

7 "Incompetency is any physical, moral or intellec-
8 tual quality which incapacitates an officer to perform his
9 duties. The incompetency must be one which has arisen
10 since and did not exist prior to the election of the officer
11 sought to be removed."

12 So if a particular person was elected and he
13 had those defects when he was elected, it is assumed that
14 the people had full knowledge of those defects, and they
15 are willing to be governed by the person as such. They
16 elected him.

17 Now, my amendment deals in very broad terms.
18 First of all, it gives to the General Assembly the power
19 which the people have got to give to somebody to set up
20 a system for the removal of officers. It provides for
21 an investigation, it does not say how this investigation

1 has to be conducted. As indicated in the old Constitution,
2 sometimes the Governor conducted it. It could be conducted
3 by a Grand Jury or a Commission. I would leave that
4 strictly up to the General Assembly. After the investigation
5 is conducted, it would be subject to a judicial review.
6 This also falls in the same lines as the old Constitution.
7 It would insure that there is some type of judicial
8 review to prevent this being used as a political shillelagh.

9 The other thing is for the appointment then
10 of somebody to take the office after you have the man
11 removed, and in this case it provides that the General
12 Assembly shall provide it. Generally it is provided by
13 giving the power to the Governor. However, there may be
14 some reason why the General Assembly would want to deal
15 with it in another manner.

16 The only provision which is put in which is
17 not part of the old Constitution is that the man should
18 be of the same political party. This would obviate this
19 being used for political purposes, and the man simply
20 fills out the remainder of the unexpired term. It is
21 not tantamount to the new election, the next occasion

1 then, a new successor would be appointed in accordance
2 with the usual processes, as if the former incumbent had
3 remained in office.
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1 THE CHAIRMAN: Are there any questions of the
2 sponsor of the amendment?

3 Delegate Bamberger.

4 DELEGATE BAMBERGER: Delegate Grant, do you
5 intend that this would apply to only elected state officers?

6 THE CHAIRMAN: Delegate Grant.

7 DELEGATE GRANT: I do not. I have it in there,
8 any officer.

9 THE CHAIRMAN: Delegate Bamberger.

10 DELEGATE BAMBERGER: Does that include appointed
11 state officers and, if so, doesn't it run contrary to some
12 of the provisions of the executive article?

13 THE CHAIRMAN: Delegate Grant.

14 DELEGATE GRANT: First of all, the amendment
15 starts out, "except as otherwise provided in this Consti-
16 tution". If there is some constitutional means provided
17 either by the implied power of appointment included in the
18 power to dismiss, that would override.

19 If there is no means provided, then the General
20 Assembly may provide a means. As I point out to you,
21 there are already three officials in the Constitution for

1 whom there is no means provided.

2 THE CHAIRMAN: Delegate Bamberger.

3 DELEGATE BAMBERGER: I am bothered then by how
4 it would apply to any appointed officer because my recol-
5 lection of the executive article is that the governor has
6 the right to remove all of those appointed officials. If
7 that is so, then I just think we might be more specific
8 and really pin this where we want to pin this which is on
9 elected state officials.

10 THE CHAIRMAN: Delegate Grant.

11 DELEGATE GRANT: It does apply to appointed
12 officers, remember there is a dichotomy, the power of
13 appointment carries with it the power of removal if it is
14 an appointment for an indefinite term. If it is for a
15 definite term, then it does not carry the implied power
16 of removal. Then you get into the situation he serves
17 at the pleasure of the appointed official then he may be
18 removed whether his term is definite or indefinite. In
19 the executive article we provide that the heads of the
20 executive department shall serve at the pleasure of the
21 government. For those 20 people the power of removal is
already implied in the Constitution. However, were some

1 other offices: to be created as they undoubtedly will for
2 the governor to appoint, if they were appointed for a
3 four-year term there would be now implied power of the
4 governor to remove the people concerned.

5 THE CHAIRMAN: Delegate Bamberger.

6 DELEGATE BAMBERGER: And then the words "except
7 as otherwise provided", on lines 5 and 6, mean that if
8 nobody else has the power to remove for cause, then this
9 section and only then does this section apply?

10 THE CHAIRMAN: Delegate Grant.

11 DELEGATE GRANT: Does this section apply to
12 elected or appointed officials, counties or municipalities?

13 THE CHAIRMAN: Delegate Grant.

14 DELEGATE GRANT: This would apply to any
15 elected or appointed official that is not otherwise pro-
16 vided for in the Constitution. Now, the question comes
17 up, what would you do with local officials. It could be
18 presumptive that the General Assembly would deal with the
19 question by law, they would elect certain standards. If
20 the county officials decide to implement these standards
21 and go beyond them, they could. But it would be a universal

1 standard across the State. Something that was illegal
2 in one county would not be legal in another. You would
3 have to have a uniform standard.

4 THE CHAIRMAN: One more question.

5 Delegate Bamberger.

6 DELEGATE BAMBERGER: I just do have one. This
7 will take some consideration of the language.

8 You say, first, the General Assembly shall
9 provide by law for investigation and you restrict that to
10 two areas, one, misconduct and, two, incompetency. Then
11 you provide for removal, but removal while it is for good
12 cause which would seem to me to be rather broad is re-
13 stricted to removal of officers who have been investigated
14 so, in effect, what you are saying is that the General
15 Assembly may provide for removal for misconduct for in-
16 competency and not for any other reason.

17 THE CHAIRMAN: Delegate Grant.

18 DELEGATE GRANT: That is correct because the
19 phrase "misconduct in office" as I read the definition
20 includes willful malfeasance, misfeasance, nonfeasance and
21 any act involving moral turpitude or contrary to justice,

1 honesty or principles or good morals if performed by virtue
2 of or under authority of an office and incompetency in-
3 cludes any physical moral or intellectual qualities which
4 incapacitates an officer to perform his duty. The incom-
5 petency must be one which has arisen since and did not
6 exist prior to the election.

7 These are the two words that are used in the
8 old Constitution, they are the two words of broadest defi-
9 nition in the lexicon of the impeachment victim.

10 THE CHAIRMAN: Delegate Case.

11 DELEGATE CASE: Mr. Chairman, with your indul-
12 gence and the indulgence of the Committee of the Whole, I
13 think this is such a far-reaching and encompassing sug-
14 gestion, that I would beg leave to ask Delegate Grant a
15 few more questions because I am confused as to what this
16 covers.

17 THE CHAIRMAN: Very well, you may.

18 DELEGATE CASE: You say it does not cover the
19 judiciary, it does not cover the legislative branch.
20 You have established with Delegate Bamberger that it does
21 not cover the heads of departments whom the governor can

1 appoint, am I right up to this point?

2 THE CHAIRMAN: Delegate Grant.

3 DELEGATE GRANT: It covers the heads of the
4 departments who serve at the governor's pleasure which is
5 indicated in the article to be so far 20 people. If they
6 serve at his pleasure then he can remove them whether
7 they serve for a definite or indefinite term. He can re-
8 move an appointed official if he serves for an indefinite
9 term. He cannot remove if he is serving a definite term.
10 Unless he is one of the officials serving at ^{his} pleasure.
11 There are going to be 20 of them serving at ^{his} pleasure as
12 the Constitution now stands.

13 THE CHAIRMAN: Delegate Case.

14 DELEGATE CASE: I suggest to you that Section 4.22
15 of the executive branch says exactly that. That the heads
16 of principal departments do so serve and serve at the
17 pleasure of the governor, so I take it from what you are
18 saying is that the heads of those departments would not be
19 affected by this section. Isn't that true, Section 4.22?

20 THE CHAIRMAN: Delegate Grant.

21 DELEGATE GRANT: That is correct, they are already

1 covered by the Constitution.

2 THE CHAIRMAN: Delegate Case.

3 DELEGATE CASE: Section 4.23, Delegate Grant,
4 deals with all other personnel in the executive branch
5 and it says whose method of appointment or removal is
6 not specifically dealt with in this article shall be
7 appointed and may be removed as prescribed by law, so
8 aren't all of the rest of the people in the executive
9 branch covered by provisions that the Committee of the
10 Whole has already adopted?

11 THE CHAIRMAN: Delegate Grant.

12 DELEGATE GRANT: I point out to you first of
13 all that any official who would come under that section,
14 that it could be construed could be considered if he
15 was in the executive branch of that narrow definition.
16 However, I point out to you it does not include the
17 comptroller who are specifically provided for in the Con-
18 stitution.

19 It does not include the state's attorneys. It
20 probably does not include the clerks of the court who are
21 elected officers, it certainly does not include any

1 officials of local governments.

2 THE CHAIRMAN: Delegate Case.

3 DELEGATE CASE: Can I take it from that, then,
4 that your proposed section does intend to deal with the
5 state's attorneys, with local officials of all kinds, is
6 this the purport of it?

7 THE CHAIRMAN: Delegate Grant.

8 DELEGATE GRANT: The purport of this section is
9 to give to the General Assembly as a sovereign nation
10 of power the power to take care of the removal of officers
11 where it is not otherwise provided for in the Constitution.

12 THE CHAIRMAN: Delegate Case.

13 DELEGATE CASE: I take it the answer to my
14 question is a sort of a round-about yes.

15 THE CHAIRMAN: Delegate Grant.

16 DELEGATE GRANT: Yes, that is correct.

17 THE CHAIRMAN: Delegate Case.

18 DELEGATE CASE: The one other thing which I wish
19 to suggest to you is that the provisions in Section 4.22,
20 4.21; 4.22 and 4.23 which we have already approved exempts
21 from their provisions the President of the University of

1 Maryland, the State Superintendent of Schools and the
2 head of the State College System and I assume that your
3 provision, that this suggested provision intends to take
4 care of them, is this correct?

5 THE CHAIRMAN: Delegate Grant.

6 DELEGATE GRANT: This provision could probably be
7 best construed as the rest and residue.

8 THE CHAIRMAN: Delegate Case.

9 DELEGATE CASE: Very well.

10 THE CHAIRMAN: For what purpose does Delegate
11 Gallagher rise?

12 DELEGATE GALLAGHER: Your continued indulgence
13 for one question, Mr. Chairman.

14 THE CHAIRMAN: Very well.

15 DELEGATE GALLAGHER: Delegate Grant, the Balti-
16 more City Charter has specific provisions whereby the
17 mayor or the city council can remove certain officials
18 upon trial and a required vote. Would it be the intention
19 of you as the sponsor of this amendment to have the General
20 Assembly pass laws covering the identical officers so that
21 there would be possibly two avenues of removal or would
you expect that the Legislature would prevail over the

1 Charter?

2 THE CHAIRMAN: Delegate Grant.

3 DELEGATE GRANT: The problem here is a consti-
4 tutional one. Without some grant of authority to the
5 General Assembly to provide for the removal of officers,
6 it is doubtful that they could in turn delegate to anybody
7 the power for removal of officers.

8 Now, if under the shared powers concept they
9 have already delegated this power in a charter to Balti-
10 more City, this would make the delegation lawful.

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1 THE CHAIRMAN: Delegate Bamberger, do you still
2 have one further question?

3 DELEGATE BAMBERGER: No, sir.

4 THE CHAIRMAN: Does any Delegate desire to
5 speak in opposition to the amendment?

6 Delegate Boyer.

7 DELEGATE BOYER: Mr. Chairman, I have
8 consulted with our expert on the Committee, Mr. Sosnowski,
9 on this particular article on impeachment, and with
10 several other members of the Committee.

11 If this does what we think it does, we think it
12 is good in import and intent. We feel perhaps there
13 has been some loophole in the general GP recommendations
14 dealing with local officers, so unless there is some
15 objection from any member of the Committee, and please
16 feel free to speak up, we would suggest, perhaps, that the
17 amendment be adopted along with GP-10.

18 THE CHAIRMAN: Does any Delegate desire to
19 speak in opposition?

20 Delegate Adkins.

21 DELEGATE ADKINS: Mr. Chairman, I believe in a

1 strong executive and have so argued in this convention.
2 I don't believe it should be this strong and I would urge
3 that the amendment be defeated.

4 THE CHAIRMAN: Does any Delegate desire to
5 speak in favor of the amendment?

6 Delegate Grant.

7 DELEGATE GRANT: I would just simply point out
8 that this is not a delegation of power of the executive,
9 but delegation of the power of the General Assembly.

10 THE CHAIRMAN: Delegate Bennett.

11 DELEGATE BENNETT: It seems to me, Mr. Chairman,
12 and members of the delegation, that this is a pretty broad
13 hunting license for the General Assembly which in fact
14 imbues them with authority to do almost anything. There
15 is no definition of what is misconduct or what is
16 incompetency, and any particular group or any particular
17 committee can start out to investigate almost anyone.

18 Now, I ask, how are you going to get independence
19 in the conduct of office if you are going to strike the fear
20 into them of an investigation of this kind?

21 How are you going to get really independent men

1 to serve their state when they have this bludgeon, this
2 threat hanging over them all of the time, so that anybody
3 can bring up the issue of incompetency at any time.

4 It seems to me the amendment certainly ought to
5 be defeated in the name of good government.

6 THE CHAIRMAN: Does any Delegate desire to
7 speak in favor of the amendment?

8 Delegate Grant.

9 DELEGATE GRANT: I point out that the concepts
10 that are used in there of misconduct in office and incom-
11 petence are well defined legal concepts. It provides
12 for a judicial review and a judicial review would adhere
13 to these terms.

14 I point out that if you don't give the General
15 Assembly power in this area, you have got in this
16 constitution officers beyond the power of removal for any
17 reason short of impeachment.

18 THE CHAIRMAN: Delegate Mason.

19 DELEGATE MASON: I would like to ask Delegate
20 Grant a question.

21 THE CHAIRMAN: Delegates desiring to speak

1 would have the floor.

2 Delegate Case, do you desire to speak against
3 the amendment?

4 DELEGATE CASE: Mr. Chairman, ladies and
5 gentlemen of the Committee, I think this is a very dangerous
6 amendment, and I think so for two reasons.

7 First, it violates all the chief powers principles
8 that we have adopted heretofore through the adoption of the
9 recommendations of the Local Government Committee's
10 suggestions.

11 Secondly, it is in complete violation of
12 the spirit if not the terms of Sections 421, 422 and 423
13 of the Executive Department which we have also adopted.

14 I think that the proposed amendment runs counter
15 to both of these, philosophically and practically. It
16 seems to me this serves as nothing but a witch hunt, where
17 the terms and provisions which I have already referred
18 to adequately take care of the case, so I would hope
19 that the amendment would be defeated.

20 THE CHAIRMAN: Delegate Grant, do you take the
21 floor to yield to a question from Delegate Mason?

1 DELEGATE GRANT: Yes, sir.

2 THE CHAIRMAN: Delegate Mason.

3 DELEGATE MASON: Delegate Grant, suppose
4 you moved from office an officer who is non-political --
5 say is the president of the institution of higher learning
6 or a member of the State Board of Education.

7 How do you go about replacing that non-political
8 officer?

9 THE CHAIRMAN: Delegate Grant.

10 DELEGATE GRANT: In this case, since it is
11 a non-political office, you wouldn't have to be concerned
12 with meeting that qualification.

13 THE CHAIRMAN: Is there any further discussion?

14 Delegate Byrnes.

15 DELEGATE BYRNES: There has been some concern
16 expressed over the plenary power of the General Assembly
17 in this section over local officials, and Delegate Grant
18 has indicated to me privately that he would accept
19 an amendment which we might interlineate at this point, if
20 you would.

21 THE CHAIRMAN: What is the suggestion?

1 DELEGATE BYRNES: In line 6, after
2 "constitution,", "or in the laws or instruments of
3 government of counties or municipal corporations,".

4 THE CHAIRMAN: Delegate Grant, would you accept
5 the suggested amendment?

6 DELEGATE GRANT: Yes, I would.

7 THE CHAIRMAN: Is there any objection to
8 considering the amendment modified by inserting, after
9 the comma in line 6 the words "or in the laws or
10 instruments of government of counties or municipal
11 corporations,"?

12 (There was no response.)

13 THE CHAIRMAN: There being no objection, the
14 amendment will be so modified.

15 Delegate Carson.

16 DELEGATE CARSON: Mr. Chairman, those words
17 are not all inclusive. I think the phraseology desired
18 would be "units of local government", and I would like to
19 know whether Delegate Grant would accept that in place of
20 what was read.

21 THE CHAIRMAN: The words "units of local

1 government" in place of all that was read?

2 DELEGATE CARSON: In place of the words
3 "counties or municipal corporations".

4 THE CHAIRMAN: Delegate Grant.

5 DELEGATE GRANT: I assume you mean the
6 instrument of government of local units of government.
7 Yes, that would be acceptable.

8 THE CHAIRMAN: Is there any objection to
9 considering the amendment modified in the following manner
10 instead of the manner previously indicated by inserting
11 after the comma in line 6 the words "or in the laws or
12 instruments of government" -- was it "a unit of government"?

13 DELEGATE CARSON: Any unit of local government
14 I think would take care of it.

15 THE CHAIRMAN: Is there any objection to modify-
16 ing the amendment by inserting after the comma in line 6
17 the words "or in the laws or instruments of any unit of
18 local government,"?

19 Delegate Bennett.

20 DELEGATE BENNETT: Mr. Chairman, I am afraid
21 I will have to object. This is getting confusing.

1 THE CHAIRMAN: Very well, there is nothing more
2 needed than the statement of the objection. The amendment
3 can't be received unless printed.

4 Delegate Wheatley?

5 DELEGATE WHEATLEY: Mr. Chairman, I have a
6 further question of Delegate Grant if he will yield
7 at this time.

8 THE CHAIRMAN: Delegate Grant, do you yield
9 for a further question?

10 DELEGATE GRANT: Yes, sir.

11 THE CHAIRMAN: Delegate Wheatley.

12 DELEGATE WHEATLEY: You made some lengthy
13 statement about judicial review.

14 Would this be limited to action by the General
15 Assembly that was arbitrary, capricious, or insufficient
16 evidence? I am not quite sure how the judiciary would
17 review the General Assembly unless it would be the same
18 as reviewing a statute.

19 THE CHAIRMAN: Delegate Grant.

20 DELEGATE GRANT: The judicial review would
21 include such method of review, with such jurisdiction as

1 the General Assembly would prescribe by law in the same
2 manner they prescribe jurisdiction for any of their present
3 courts, such as the Superior or District Court. They
4 would prescribe the jurisdiction of the review. They
5 may have original jurisdiction, however they want to do it,
6 if there is an enabling act to name them to impose on the
7 judiciary the duties of making the review of their
8 investigation.

9 THE CHAIRMAN: One more question, Delegate
10 Wheatley.

11 DELEGATE WHEATLEY: I will try to combine
12 this one.

13 In so doing, as I understand your answer, could
14 the General Assembly then provide for (a) little
15 or no review, or (b) review limited to certain issues
16 as to facts?

17 Would the review apply to appointing a
18 successor or would it be limited? How detailed must
19 they be or must they provide for any review at all,
20 that is my real question?

21 THE CHAIRMAN: Delegate Grant.

1 DELEGATE GRANT: Because of the separation of
2 powers, the Legislature, unless otherwise authorized,
3 can't impose duties on the judiciary. This is simply
4 an enabling clause to enable them.

5 The statute of review of the judiciary in
6 removal cases is well established, and under the due process
7 clause there would be a certain minimal amount of review
8 that would have to be had.

9 THE CHAIRMAN: Are you ready for the question?
10 The Clerk will ring the quorum bell.

11 For what purpose does Delegate Grant rise?

12 DELEGATE GRANT: I would like to make one
13 statement. This is a serious constitutional matter,
14 and I remind you unless there is something in the
15 constitution giving somebody this power, the power does
16 simply not exist.

17 THE CHAIRMAN: Delegate Bamberger.

18 DELEGATE BAMBERGER: A point of parliamentary
19 inquiry.

20 THE CHAIRMAN: State the inquiry.

21 DELEGATE BAMBERGER: Mr. Chairman, if this

1 amendment is defeated, would it be in order for Delegate
2 Grant to later offer an amendment which would empower the
3 General Assembly to provide for removal of state elective
4 officers appointed for indefinite terms?

5 THE CHAIRMAN: It would not be in order if offered
6 any time after the Committee of the Whole concluded
7 consideration of GP-10 unless it were offered on second
8 reading. It would, of course, be entirely in order for
9 Delegate Grant or any other Delegate to submit a
10 proposal embodying this matter to the Committee, and the
11 Committee with the permission of the Convention could
12 support a subsequent Committee Recommendation.

13 Delegate Case.

14 DELEGATE CASE: Mr. Chairman, would it be in
15 order to suggest that this matter be laid over until
16 some time later this evening so that the amendment suggested
17 by a number of the delegates could be printed and laid
18 on the delegates' desk?

19 The reason I suggest this is that I think
20 we are now going to vote on something that Delegate Grant
21 himself doesn't want. He said he would accept the

1 amendment which would take the local officials out of the
2 ken of this particular provision, so in voting on this
3 it would seem to me that we are in effect voting on, as
4 I said earlier, something he himself says he doesn't
5 want.

6 THE CHAIRMAN: I gather from the colloquy
7 between Delegate Grant and Delegate Bamberger that he
8 would propose to offer another proposal, amendment
9 or proposition -- I am not sure in what form he would
10 offer it -- embodying this idea if the amendment were
11 rejected at this time.

12 I don't think it is possible to consider it any
13 more this evening.

14 Are you ready for the question?

15 Delegate Grant, the Chair feels we will
16 have to cut off debate. We have gone on and on.
17 Do you have a question?

18 DELEGATE GRANT: With the Chair's permission,
19 I would like to withdraw it and let the Committee go
20 ahead.

21 THE CHAIRMAN: The Chair will afford you that

1 permission. The amendment is withdrawn. One should never
2 speak too hastily.

3 As a matter of a little variation and some
4 interest, I think I will have to take a few minutes to
5 tell you the results of a chance remark made by the Chair
6 in the spirit of levity in the colloquy with Delegate
7 Hanson dealing with Amendment 1.

8 I realized in referring, as I did, to the possi-
9 bility that there was a delegate in the Constitutional
10 Convention of 1787 named Hanson that my history was perhaps
11 defective, so I quick sent a little note to my good friend
12 Delegate Adkins asking if I wasn't a bit off and he said,
13 "Yes, I think you are".

14 Following that and several other notes I am
15 now presented with the results of research. I have been
16 sent up the Encyclopedia Brittanica with an article on
17 John Hanson, who was indeed not the delegate to the
18 Constitutional Convention of 1787 -- he having departed
19 this life before it convened -- but was the first
20 President of the United States under the Articles of
21 Confederation, the Maryland Manual, which lists John Hanson

1 as a delegate from Maryland to the Continental Congress
2 from 1780 to 1783, and a book entitled "John Hanson,
3 Our First President", by Seymour Smith.

4 I don't believe any convention could have more
5 research done more quickly on a chance remark. (Laughter.)

6 Let the record be corrected, the John Hanson
7 was indeed not the delegate to the Constitutional Convention
8 of 1787 referred to by the Chair but, instead, was the
9 first President of the United States.

10 Delegate Hanson.

11 DELEGATE HANSON: Mr. Chairman, my remote
12 and indirect ancestor thanks you for correcting this
13 record.

14 THE CHAIRMAN: I neglected to mention the fact
15 also that the Chief Page sends me another contribution.
16 There is a John Hanson Highway in Maryland dedicated a
17 year and a half ago.

18 Are there any further amendments to Committee
19 Recommendation GP-10?

20 Delegate Bamberger, do you desire to offer
21 your Amendment B?

1 DELEGATE BAMBERGER: Yes, sir.

2 THE CHAIRMAN: Pages will please distribute
3 Amendment B. This will be Amendment No. 3.

4 The Clerk will read the amendment.

5 MR. QUILLEN: Amendment No. 3 to Committee
6 Recommendation No. GP-10 by Delegate Bamberger.

7 On page 1 in line 6 after the word "elected"
8 add the word "state".

9 THE CHAIRMAN: The amendment is submitted
10 by Delegate Bamberger. Is there a second.

11 (Whereupon, the motion was seconded.)

12 THE CHAIRMAN: Delegate Byrnes seconds.

13 The Chair recognizes Delegate Bamberger.

14 DELEGATE BAMBERGER: The purpose of the
15 amendment is only to make it clear that the power of
16 impeachment by the House of Delegates and the judicial
17 tribunal does not extend to elected officials of any
18 county, municipality, or any other unit of government
19 other than the state government.

20 It did seem to me that that was probably what
21 the Committee intended, because when they spoke of other

1 state officers, presumably appointed officers, they made it
2 clear that there they only referred to state officers.

3 It is generally held that the power of impeach-
4 ment is a conferred power, and there is also some authority
5 for the proposition that the power of impeachment by a
6 state legislature does not extend to county officers.

7 I would also like to clear up at this point one
8 part of the record which might be unclear from the remarks
9 of Delegate Malkus.

10 Delegate Malkus I think suggested that the House
11 of Delegates might have the power to impeach a Senator.
12 I think it has been said by the Committee Chairman
13 and others in this discussion that the power of impeachment
14 does not extend to members of the General Assembly.
15 That is not the purpose of this amendment.

16 The only purpose of this amendment is to make it
17 clear that the power of impeachment by the General Assembly
18 applies only to elected state officials.

19 THE CHAIRMAN: Are there any questions of
20 the sponsor of the amendment?

21 (There was no response.)

1 THE CHAIRMAN: The Chair hears none.

2 Delegate Boyer:

3 DELEGATE BOYER: Mr. Chairman, it was our
4 intention that this was elected state officers, and unless
5 there is some objection from any member of the Committee
6 I would suggest that we concur in the amendment.

7 THE CHAIRMAN: Is there any further discussion?
8 Are you ready for the question?

9 The Clerk will ring the quorum bell.

10 The question arises on the adoption of Amendment
11 No. 3. A vote Aye is a vote in favor of the amendment.
12 A vote No is a vote against.

13 Cast your votes.

14 (Whereupon, a vote was taken.)

15 THE CHAIRMAN: Has every delegate voted?

16 Does any delegate desire to change his vote?

17 The Clerk will record the vote.

18 There being 101 votes in the affirmative
19 and two in the negative, the motion is carried. The
20 amendment is adopted.

21 Are there any further amendments to Committee

1 Recommendation GP-10?

2 (There was no response.)

3 THE CHAIRMAN: The question then arises on the
4 approval of Committee Recommendation GP-10. Are you
5 ready for the question?

6 The question rises on the approval of Committee
7 Recommendation GP-10 as amended. A vote Aye is a vote
8 in favor of the approval of the Recommendation as amended;
9 a vote No a vote against.

10 Cast your votes.

11 (Whereupon, a vote was taken.)

12 THE CHAIRMAN: Has every delegate voted?

13 Does any delegate desire to change his vote?

14 The Clerk will record the vote.

15 There being 89 votes in the affirmative and
16 in the negative, the Committee Recommendation GP-10 as
17 amended is approved.

18 The next item on the agenda is a consideration
19 of Committee Recommendation No. GP-11.

20 The Chair recognizes Delegate Boyer.

21 DELEGATE BOYER: Mr. Chairman, ladies and

1 gentlemen, GP-11 deals with separation of powers.

2 At the present time, the constitutions of no
3 less than 40 states contain the separation of powers
4 requirement in one form or another. The only states
5 which do not have such provision in their constitutions
6 are Alaska, Delaware, Hawaii, Kansas, New York, North
7 Dakota, Ohio, Pennsylvania, Washington, and Wisconsin.
8 A few states include this provision in their Bill of
9 Rights, and this occurred primarily in the constitutions
10 of the older states along the eastern coast -- Georgia,
11 Maryland, Massachusetts, New Hampshire and North Carolina.

12 In nearly all of the other states, the clause
13 is separately identified under the head of "Distribution
14 of Powers". Its special importance is recognized by setting
15 it forth as one of the first articles of the constitution
16 preceding the articles which outline the establishment
17 of the judicial, legislative and executive branches.

18 Cases decided by the Court of Appeals under
19 the separation of power doctrine, as set forth in Article 8
20 of our present constitution, illustrate that the inclusion
21 of this article in the constitution has presented a useful

1 defense against the improper accumulation of power in any
2 one department of government.

3 Your Committee on Provisions had taken up this
4 particular item recognizing that it has been already
5 included under Article 8 of the Declaration of Rights
6 in our constitution of 1867, and recommends for
7 your consideration the reinclusion of it in the present
8 constitution. If it was good then, it must be good now.

9 THE CHAIRMAN: Are there any questions of the
10 Committee Chairman?

11 The Chair calls your attention to the fact
12 that this was a matter discussed to some extent several
13 days ago, or last week, in connection with another
14 Committee recommendation.

15 Delegate Carson.

16 DELEGATE CARSON: Chairman Boyer, the last two
17 words used are "judicial review".

18 Do you mean by that that the requirement of
19 judicial review could be satisfied by merely having the
20 court review a record of the administrative agency?

21 I assume you do.

1 THE CHAIRMAN: Delegate Boyer.

2 DELEGATE BOYER: Yes, under the Administrative
3 Procedure Act, Article 2(b).

4 THE CHAIRMAN: Are there any other questions?
5 Delegate Willoner.

6 DELEGATE WILLONER: In your deliberations,
7 did you consider Article 3, Section 60 of the present
8 constitution? Is that considered an exception within --
9 well, I don't know exactly what it would be. Did you
10 consider it?

11 THE CHAIRMAN: Delegate Boyer.

12 DELEGATE BOYER: No, I must confess we did
13 not compare the recommendation that we are presenting
14 here in comparison with that, either pro or con.

15 THE CHAIRMAN: Are there any further questions
16 of the Committee Chairman? If not, Delegate Boyer will
17 return to his seat and we will consider the amendment.

18 Are there any amendments to Committee Recommend-
19 ation GP-11?

20 (There was no response.)

21 THE CHAIRMAN: The Chair has none and hears none.

1 Is there any discussion on Committee Recommendation
2 GP-11? Are you ready for the question?

3 Delegate Macdonald.

4 DELEGATE MACDONALD: A parliamentary inquiry,
5 Mr. President.

6 If one wanted to vote against this provision,
7 would it be more appropriate to have an amendment to strike
8 it out, or just talk against it and vote against it?

9 THE CHAIRMAN: Speak against it and vote against
10 it is all that is necessary. It is not necessary to have
11 an amendment to delete it.

12 Delegate Macdonald.

13 DELEGATE MACDONALD: Mr. Chairman, I would
14 like to speak against this particular section. I would
15 urge, fellow delegates, that you vote against this. I think
16 this provision is archaic, unnecessary, and it just isn't
17 true.

18 In the present constitution the treasurer is
19 provided for and he is elected by the General Assembly,
20 namely by the legislative branch, and yet he performs
21 executive functions.

1 In addition to his duties as custodian of
2 the monies of the State of Maryland, he sits on the Board
3 of Public Works, and there performs executive functions,
4 yet he is appointed by the legislative branch, so in that
5 instance there is no separation of powers. There is a
6 mixture.

7 The Maryland Tax Court is supposed to be a
8 branch in the executive branch, but in fact it performs
9 judicial functions. It decides cases just like any other
10 court, except that they involve tax matters only.

11 In the present constitution on which we are
12 working right now, Section 540 of the judicial article
13 provides that the chief judge of the court of appeals
14 shall appoint a judge if the governor fails to do so.
15 To me, that is part of the executive function, but yet it
16 will be performed by the judicial branch.

17 Section 531 of the constitution we are now
18 working on gives the court of appeals and the General
19 Assembly concurrent rule-making power. The court of
20 appeals has the authority to adopt rules and so does
21 the General Assembly. That is either legislative or

1 judicial, or both, but we have two branches of the
2 government doing the same thing.

3 THE CHAIRMAN: You have one-half minute,
4 Delegate Macdonald.

5 DELEGATE MACDONALD: In another provision in
6 the legislative article we have a redistricting commission.
7 The members of the redistricting commission are appointed
8 by the General Assembly and the governor, and in a
9 certain series of events, the redistricting plan of that
10 redistricting commission can become law.

11 I submit that this archaic provision just isn't
12 true, it doesn't do anything except maybe become a sort
13 of litigation -- it may be a litigation breeder -- it doesn't
14 help any, and in the field of local and municipal government
15 it certainly runs contrary to the modern practice, and the
16 modern practice approved by the National Municipal League
17 ever since 1916 is the council-manager form of government
18 where the two branches of government are combined or
19 coalesced -- namely, the legislative and the executive.

20 THE CHAIRMAN: Your time has expired, Delegate
21 Macdonald.

1 Does any other Delegate desire to speak in favor
2 of the Recommendation?

3 Delegate Gleason.

4 DELEGATE GLEASON: Mr. Chairman, I would have
5 hoped it would not have been necessary to speak in favor
6 of the Committee proposal, but simply because it is extremely
7 difficult to explain the many ramifications that are
8 involved in an adequate discussion of this problem within
9 the time limitations imposed, it would certainly take an
10 hour's effort to survey the whole field of administrative
11 law and to give an analysis of some of the philosophical
12 leanings or concepts of government that are involved by
13 the writers on this subject in this field of law and this
14 kind of delegation, I think it will be enough for me to
15 say simply that this proposal deals fundamentally with
16 liberty.

17 It deals with that liberty which is jeopardized,
18 and I think all history proves that it is so jeopardized
19 when too much power is concentrated in one branch of the
20 government.

21 Now, I think there are two points that must be

1 clearly understood by the delegates.

2 The first point is that this provision and this
3 recommendation poses absolutely no threat to administrative
4 agencies or administrative law. These agencies have been
5 delegated legislative, executive and judicial power.
6 They have proliferated over the past 40 to 50 years
7 all the time while this provision has been in the
8 constitution -- that is point number one.

9 Point number two, the necessity for keeping
10 this provision in the constitution has not been eliminated
11 because we simply provide in this constitution that the
12 executive power shall be vested in the governor, the judicial
13 power shall be vested in the courts, and the legislative
14 power shall be vested in the General Assembly.

15 That power has been vested in those groups under
16 prior constitutions, and we have had, at the same time,
17 this provision continuing in our constitution back to 1776.

18 This Committee proposal is absolutely necessary
19 if you want to prevent one thing, and one thing only, and
20 that is a delegation of legislative power to another branch
21 of the government -- not to an administrative agency.

1 If you don't want to see legislative power
2 delegated to the judges, if you don't want to see judicial
3 power delegated to the legislature or to the executive,
4 and so on and so forth, then you have got to support this
5 Committee proposal.

6 THE CHAIRMAN: You have one minute, Delegate
7 Gleason.

8 DELEGATE GLEASON: In brief, we are talking
9 here about preventing what has been attempted in this
10 state in the past, and it has been prevented successfully
11 because this provision has been in the constitution, and
12 I have to say my good friend, Delegate Macdonald, that in
13 talking about the state treasurer, and as you know this has
14 been eliminated by this body up to this point, he is
15 talking about administrative agencies -- those are
16 administrative agencies and this power just does not touch
17 them.

18 If you are saying this should be eliminated
19 because it is an anachronism of government, then I say
20 you should go back and look at the cases because you just
21 haven't done your homework.

1 THE CHAIRMAN: Delegate Henderson.

2 DELEGATE HENDERSON: Mr. Chairman, fellow
3 delegates, with some reluctance I rise to oppose the
4 Committee recommendation, and I do so because I believe
5 this statement of the separation of legislative, executive
6 and judicial powers, this declaration in our present
7 constitution, the one we are about to adopt, creates more
8 problems than it solves.

9 To give one very quick example, for example, the
10 rule-making power which is conferred upon the court of
11 appeals is a legislative power -- there can be no
12 question about it -- and that is something which has existed
13 there for the past 25 years and will continue into the
14 future, shared to some extent with the legislature.

15 Every exercise of rule-making power which is
16 exercised by the executive agencies -- and almost every
17 one of them has to some extent or another the rule-
18 making power -- is a legislative power.

19 One might go on and cite example after example.
20 One example which struck me with great force was the
21 fact that under the local government in Montgomery County

1 the Board there, which really runs the county, shares
2 the legislative and executive powers, and that type
3 of government was recommended by the National Municipal
4 League.

5 You might go on and on, and I could think --
6 probably if I had the time I could give you 40 different
7 exceptions to this general principle. It never was
8 really a legal principle.

9 The Frenchman I mentioned on an earlier
10 occasion, Montesque -- his view that it existed based
11 on the British Parliament was quite incorrect because
12 from time immemorial the House of Lords was both a
13 legislative body and a court, as it is today.

14 To put this in the constitution will lead, I
15 take it, to any number of difficult court decisions
16 and constructions, and the need for it, if it ever
17 existed, has largely been done away with by the fact
18 that in our present constitution we have set up and
19 delineated the powers of the three branches and give
20 plenary power to the legislature, judicial power to
21 another body, and the executive power to a third, so

1 that we are recognizing the general worth of the
2 principle, but we are not saying that it is one which has
3 to be strictly observed.

4 That is the vice in this proposal which I see,
5 and I urge you to vote against it. It will lead to nothing
6 but trouble.

7 THE CHAIRMAN: Does any other delegate desire
8 to speak in favor of the amendment?

9 Delegate Singer.

10 DELEGATE SINGER: Mr. Chairman, and fellow
11 delegates, the historical perspective is that the separation
12 of powers has never been construed to be a separate and
13 distinct separation of governmental power.

14 There has always been in the history of this
15 country a blending and merging of powers so that there
16 have been, ever since we have had this principle, examples
17 existing in which one branch of government exercised the
18 powers of one or both of the other branches of government.

19 We have had a provision similar to this in all of
20 the state constitutions of Maryland from 1776. In the
21 beginning it read that the legislative, executive and judicial

1 powers of government ought to be forever separate and
2 distinct from each other. In 1851 additional language
3 was added reading identically with what we have in the
4 present constitution.

5 There have been several Maryland cases over
6 the years that have construed this particular prohibition,
7 even though there were allocations of power to the three
8 distinct branches of government.

9 I think a particularly apt example of what this
10 does do, and the reason why it is still needed, is an old
11 Maryland case that goes back to 72 Maryland, where the
12 legislature passed a statute requiring the courts to
13 change the effect of certain decrees which had been
14 final. This was voided under the provisions of the
15 Declaration of Rights, Article 8.

16 I do not feel if we eliminate this that such
17 acts by the legislature of giving the courts non-
18 jurisdiction powers or requiring the courts to act in a non-
19 judicial way would be prohibited.

20 The Supreme Court of the United States as late
21 as 1964 in an opinion by Justice Warren looked with favor

1 on knocking down an act of Congress upon this principle
2 stating it was a necessary ingredient to a free government.

3 For these reasons I ask that you support the
4 Committee's Recommendation.

5 THE CHAIRMAN: Delegate Sherbow.

6 DELEGATE SHERBOW: Mr. Chairman, ladies
7 and gentlemen, I disagree with Delegate Gleason's results,
8 but I certainly agree with him when he says you can't
9 argue this in the time that is allotted, but I will ask
10 you to bear with me because I don't want to take additional
11 time.

12 The court of appeals just last week, on December
13 13, decided a case which dealt with this direct situation.
14 I am going to read you now from the minority opinion, and
15 bear in mind that if the minority should ever become the
16 majority what you will have in the event this stays in
17 the constitution, the judge in the minority opinion, Judge
18 Wilson Barnes, said, "Article 8 of the Declaration of
19 Rights of the Maryland Constitution provides that the
20 legislative, executive and judicial powers of government
21 ought to be forever separate and distinct from each other",

1 etc. Then he goes on to say that, "It will be observed
2 that although the doctrine of separation of government
3 powers between the three great divisions of government
4 is stated in laudatory terms, the implementation of that
5 great principle to insure the freedom and liberty of
6 the individual citizen is in mandatory terms addressed to
7 each official of the state government."

8 Now, it so happened that what was before the
9 court was a situation dealing with no provision for
10 review of a decision by a state official acting as an
11 administrative officer.

12 Now, the rest of the court of appeals, the
13 majority, said this:

14 "In the earlier days of the exercise of
15 governmental powers by administrative bodies, there
16 was widespread fear that the delegating of administrative,
17 legislative and judicial powers or functions to a single
18 agency not only violated the theory of separation of
19 powers but spelled its death knell. Emotional resentment
20 against the rise of administrative power by lawyers and
21 judges rose and resulted in efforts to thwart or destroy

1 this veritable fourth branch of government by invoking the
2 separation of powers theory or using the non-delegation
3 doctrine or requiring a full and complete de novo judicial
4 determination.. These efforts had no more success than
5 had the plaintiff in the case of King Kanute v. D. C.

6 I will only say this. The court went on to say:

7 "The early fears of the bar and bench have largely
8 disappeared with experience." Yet, in this same case
9 one of the five judges in the court of appeals hearing this
10 case said the separation of powers as written in the
11 constitution means what it says.

12 It so happens I agree with Judge Henderson
13 and with Delegate Macdonald when they say it just isn't
14 true, and therefore I shall vote against the Committee
15 Recommendation.

16 THE CHAIRMAN: Does any other delegate desire
17 to speak in favor of the recommendation?

18 DELEGATE ANDERSON: Mr. Chairman, I rise to
19 speak in favor of the Committee recommendation, notwithstand-
20 ing the distinguished spokesman against this provision.

21 As you know, this came up in the general rights

1 provision, and I think I spoke then and pointed out at that
2 time that 40 states have such a provision providing for
3 the separation of the power.

4 Secondly, I think some people misunderstand
5 this provision. To start with, our court of appeals has
6 repeatedly stated it does not apply to municipal corpor-
7 ations. I read only this morning -- I can't think of the
8 last name, Pressman v. somebody in Baltimore where they
9 said it did not apply, and it was an old case, so it
10 does not apply to municipal governments at all.

11 The third point is that it does not say that the
12 legislature can't combine all three of these powers,
13 actually, in a body -- such as the workmen's compensation
14 commission. There is no question about that.

15 The legislature has the right to put the
16 power wherever they want it, but the thing of it is, and
17 the purpose of this separation of the powers is to
18 prevent the judiciary from assuming powers that are
19 delegated to the executive, to prevent the executive from
20 assuming powers that are delegated to the legislature.

21 In other words, it is purposely set up to

1 keep the constitutional officers from assuming power
2 that is not delegated to them by the constitution, and I
3 think this is a fundamental principle that should be
4 continued in this constitution.

5 THE CHAIRMAN: Delegate Winslow.

6 DELEGATE WINSLOW: Mr. Chairman, I shall be
7 very brief. We were reminded a few minutes ago that
8 we should go and do our homework. I suggest as the
9 homework for the delegate that he go and read the
10 Constitution of the United States. No place in American
11 constitutional history have the courts been so careful
12 to hold the various departments of government to their
13 constitutional duties as at the Federal level. Still
14 you may read the Constitution of the United States from
15 cover to cover and find no mention of the separation of
16 powers doctrine.

17 THE CHAIRMAN: Delegate Willoner.

18 DELEGATE WILLONER: I wish to speak in
19 opposition to this proposal. As I spoke to it the other
20 day, I would like to point out there is a major change in
21 this proposal in that the word "ought" is changed to "shall".

1 As pointed out in the opinion read by Judge
2 Sherbow, the present language is oratorical as far as the
3 first part of it, the second part of it is mandatory.

4 I would also like to point out in Section 60
5 of Article 3, which the Committee did not even consider --
6 that is, giving the General Assembly the power to suspend
7 a sentence or to have an indeterminate sentence or to
8 release on parole -- was put in the constitution to get
9 around this provision, and this provision has been left
10 out at this point.

11 Therefore, I would assume that if we leave it
12 out, the courts will no longer be able to parole or
13 provide indeterminate sentences or suspend sentences,
14 which is the present practice today.

15 This particular provision has a lot of problems
16 in it. There are states where this language has been
17 held to prevent judicial review of legislative acts,
18 and it should not be in the constitution, at least with
19 the "shall" in there.

20 THE CHAIRMAN: Are you ready for the question?

21 The Clerk will ring the quorum bell.

1 The question arises on the approval of Committee
2 Recommendation No. GP-11. A vote Aye is a vote in
3 favor of the approval of the Committee Recommendation.
4 A vote No is against approval of the Committee Recommend-
5 ation.

6 Cast your votes.

7 (Whereupon, a vote was taken.)

8 THE CHAIRMAN: Have all delegates voted?
9 Does any delegate desire to change his vote?

10 (There was no response.)

11 THE CHAIRMAN: The Clerk will record the vote.

12 There being 42 votes in the affirmative and
13 69 in the negative, Committee Recommendation No. GP-11
14 fails of approval.

15 The Chair recognizes Delegate Powers.

16 DELEGATE POWERS: Mr. Chairman, I move the
17 Committee of the Whole rise and report its approval of
18 Committee Recommendation No. GP0 as amended, its approval
19 of Committee Recommendation No. GP-10 as amended, and
20 its rejection of Recommendation No. GP-11.

21 THE CHAIRMAN: All in favor signify by saying

1 Aye; contrary No. The Ayes have it, it is so ordered.

2 (Whereupon, at 10:13 p.m., the Committee of the
3 Whole rose, and the Convention reconvened.)

4 (The mace was replaced by the Sergeant at Arms.)

5 THE PRESIDENT: The Convention will please
6 come to order.

7 On behalf of the Convention Committee of the
8 Whole the Chair reports that the Committee has considered
9 and approves Committee Recommendation GP-9 as amended,
10 and approves Committee Recommendation GP-10 as amended,
11 but fails to approve Committee Recommendation GP-11.

12 Committee Recommendations GP-9 and 10 as
13 amended are each referred to the Committee on Style,
14 Drafting and Arrangement.

15 As you realize, we have concluded consideration
16 of the items on the general orders of the day with the
17 exception of Items H, I and J, each of which will be on
18 the calendar for consideration tomorrow.

19 Item B, which was not concluded, will be on
20 the calendar for consideration on Thursday.

21 The progress made today would indicate that

1 unless we run into undue difficulty tomorrow it would
2 not be necessary to have a session tomorrow evening.
3 The Chair would particularly like not to have such a
4 session because the Committee on Style plans a meeting
5 for tomorrow evening.

6 There will not be a session of the Convention
7 on Thursday evening, as previously announced. Again
8 the Committee on Style is planning a meeting Thursday
9 evening, also on Friday and perhaps on Saturday.

10 The Committee on Style has been meeting
11 practically constantly when the sessions of the Convention
12 are not on, and it will be the hope of your officers that
13 by concluding everything before the Committee of the Whole
14 this week, the sessions of the Convention next week will be
15 limited to a consideration of reports of the Committee on
16 Style, which means second reading on the various Committee
17 Recommendations.

18 The Committee on Style has a great deal of
19 work to do, and it is obviously unfair to them to have the
20 Convention sit throughout the day and then expect the
21 Committee to sit in the evening. With that in mind,

1 and assuming that we make the progress tomorrow and
2 Thursday that it now appears we will, it would be the
3 intention to have sessions of the Convention next week
4 beginning Wednesday in the afternoon and evening, not in
5 the morning, leaving the mornings available for meetings
6 of the Committee on Style for a few last minute
7 touch-ups by various other committees, and for further
8 consideration by the drafting teams which are working
9 on the schedule of transitional provisions and legislation.
10 I would hope that by maintaining this schedule we could
11 conclude all second readings by the end of next week.

12 Are there any announcements by the Committee
13 Chairmen?

14 Delegate Penniman.

15 DELEGATE PENNIMAN: Mr. Chairman, the Committee
16 on Style also meets tomorrow morning at 8:30.

17 THE PRESIDENT: Are there any other announce-
18 ments by Committee Chairman?

19 Any announcements by other delegates?

20 Any delegates present now not present at roll
21 call may indicate their presence on supplemental roll call.

1 The Clerk will record the supplemental roll call.

2 The Chair recognizes Delegate Powers.

3 DELEGATE POWERS: Mr. President, I am pleased to
4 announce that my colleague and good friend, Philip H.
5 Dorsey, and his charming wife Dorothy are celebrating
6 their 40th wedding anniversary. I hope you will all
7 joint in extending hearty congratulations and well wishes.
8 (Applause.)

9 I move that we adjourn until ten o'clock tomorrow
10 morning.

11 THE PRESIDENT: All in favor signify by
12 saying Aye. Contrary, No. The Ayes have it, it is so
13 ordered.

14 (Whereupon, at 10:28 p.m., the Convention
15 adjourned to reconvene at 10:00 a.m., Wednesday,
16 December 20, 1967.)

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